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Christian Legal Society (CLS), founded in 1961, seeks to glorify God by inspiring, encouraging, and equipping Christian attorneys and law students, both individually and in community, to proclaim, love, and serve Jesus Christ through the study and practice of law, through the provision of legal assistance to the poor and needy, and through the defense of the inalienable rights to life and religious freedom.

COVER EMBLEM

The inside design symbolizes the spirit of a builder in its dislocated features resembling the architecture of layered bricks and the four pillars representing the four ministries of CLS. The branches represent harvest and the ongoing mission of the Church to toil the land, water the seeds, and pray to God to send the increase. The circle represents completion — embodied in the incarnation and second coming of Christ as the proverbial Alpha and Omega.

"For we are co-workers in God's service; you are God's field, God's building." (1 Corinthians 3:9)

STATEMENT OF PURPOSE

The mission of the *Journal of Christian Legal Thought* is to equip and encourage legal professionals to seek and study biblical truth as it relates to law, the practice of law, and legal institutions.

Theological reflection on the law, a lawyer's work, and legal institutions is central to a lawyer's calling; therefore, all Christian lawyers and law students have an obligation to consider the nature and purpose of human law, its sources and development, and its relationship to the revealed will of God — as well as the practical implications of the Christian faith for their daily work. The *Journal* exists to help practicing lawyers, law students, judges, and legal scholars engage in this theological and practical reflection, both as a professional community and as individuals.

The *Journal* seeks, first, to provide practitioners and students a vehicle through which to engage Christian legal scholarship that will enhance this reflection as it relates to their daily work; and, second, to provide legal scholars a peer-reviewed medium through which to explore the law in light of Scripture, under the broad influence of the doctrines and creeds of the Christian faith, and on the shoulders of the communion of saints across time.

While the *Journal* will maintain a relatively consistent point of contact with the concerns of practitioners and academics alike, it will also seek to engage outside its respective milieu by soliciting work that advances the conversation between law, religion, and public policy. Given the depth and sophistication of so much of the best Christian legal scholarship today, the *Journal* recognizes that sometimes these two purposes will be at odds.

EDITORIAL POLICY

The *Journal* seeks original scholarly articles addressing the integration of the Christian faith and legal study or practice, broadly understood, including the influence of Christianity on law, the relationship between law and Christianity, and the role of faith in the lawyer's calling. Articles should reflect a Christian perspective and consider Scripture an authoritative source of revealed truth. Protestant, Roman Catholic, and Orthodox perspectives are welcome as within the broad stream of Christianity.

However, articles and essays do not necessarily reflect the views of Christian Legal Society or any of the other sponsoring institutions or individuals.

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A Theology of Tropism

*by Anton Sorkin**

"The city sleeps and the country sleeps,
The living sleep for their time, the dead sleep for their time,
The old husband sleeps by his wife and the young husband sleeps by his wife;
And these tend inward to me, and I tend outward to them,
And such as it is to be of these more or less I am,
And of these one and all I weave the song of myself."
— Walt Whitman

Tropism / 'trō-pi-zəm / *noun*
The action of a living thing turning all or part of itself in a particular direction, toward or away from something such as a source of light.

Introduction

In his seminal discussion on the installation of liturgies as the byproduct of the Christian character, James K.A. Smith's description of habits as "second nature" could not be more suitable to begin our discussion of imagination and law. In his first volume, *Desiring the Kingdom,* Smith writes, "[habits] represent our default tendencies and our quasi-automatic dispositions to act in certain ways, to pursue certain goods, to value certain things, to cherish certain relationships, and so forth."[1] In it, he warns the reader of secular liturgies, which compete for our attention and seek to use a pedagogy of imagination that changes our perception toward our unfolding narrative by which we live and breathe and have our being.

In his stimulating second volume, *Imagining the Kingdom,* Smith continues this labor, laying down a usable framework for reconstituting the errors of faith into a form of new engagement through a process of re-narration. He does this by looking at cinema (of all places), in particular the film, *The King's Speech*, where Smith offers a penetrating analysis on how people carry a story in our bones that we comport ourselves to the world in certain ways.[2] This story becomes the mechanism by which we filter out the clean and unclean segments of our reality and conform to a standard of practice that better aligns with our perceptions of right and wrong. As Smith notes, it is our most fundamental way of being-in-the-world as being-*with*-the-world.[3]

Indeed, many within the Christian tradition — and especially those who grew up in the church — carry this burden of continuing the narrative by the brute fact of proximity. I, too, was subject to this inclination, despite converting late in life and being subject to weaker forces. I was struck by the accuracy of Smith's description of the formation of *habitus* in the writing of Pierre Bourdieu when he describes it as an "embodied tradition" inscribed into my "individual history" by participation in community. As Smith explains, "conditioning and enabling my constitution of the world."[4]

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* Director, Law Student Ministries, Christian Legal Society

1 James K.A. Smith, Desiring the Kingdom: Worship, Worldview, and Cultural Formation 56 (2009). In his second volume, he continues in this line of thinking in arriving at similar language I use here: "I'm not only primed to see the situation in a certain way . . . I'm also already inclined or disposed to act in a certain way—not as the result of a decision but a sort of 'natural' tendency given the inclination that I've acquired, the habits that already primed me to 'lean' in certain directions." James K.A. Smith, Imagining the Kingdom: How Worship Works 36 (2009).

2 James K.A. Smith, Imagining the Kingdom: How Worship Works 69 (2009).

3 *Id.* at 70-71.

4 *Id.* at 81.

This all lends support to the power of narrative in the Christian tradition and the dangers this may have if the assumptions are never questioned when a believer comes to partake in "solid food." Powerfully illustrated in his commentary on Acts, Willie Jennings writes that "[s]torytellers make our bodies for us, forming narrative fabric so tightly aligned with our skin that it becomes our skin."[5] Thus, while the vision of God's story is an endemic part of the fabric that clings to the believer like madness clings to the skin of Raskolnikov in *Crime and Punishment*, the same is ultimately true of the false narrative created in the beaker of the American Myth that stirs the thinking of dominionists and separationists alike. In retrospection, the deprogramming I underwent after my undergraduate experience was a form of "re-narration" that recalibrated my physical compass in response to communities once deemed polluted. I was able to digest their lifestyles and slowly take part in their dietary prescriptions — mindful always of my ultimate commitment to Christ. I was able to embrace the urgency of the Savior's foreboding warning to the chief priests and elders in the Parable of the Two Sons, when he states that "the tax collectors and the prostitutes are entering the kingdom of God ahead of you."[6]

It was after this period that my center of understanding kicked in, as I pursued to balance my *desire* for renewal with an intellectual center toward understanding *why* this is needed.[7] I spent five years at Emory University working with John Witte trying to put the new wine into new wineskins, with the goal of distilling my ideals into a single task: to make the new public engagement "an integral part of the fabric of *my* dispositions."[8] And, in the end, things lurking in the periphery of my imagination through retrospection and study were made manifest when I read the invocation of the language of Jennings in the third volume of Smith's project. Here, finally, I realized that my own failure, like much of the failure of the Christian witness today, was an aspect of the same "distorted habitus that reflects a failed *pedagogy*."[9] A "deep capture" if you will — based on a perpetuation of a false narrative of Christian life that has left those in error largely oblivious and complacent.[10]

To this end, in my attempt to untangle from these "mangled spaces," I was first forced to recognize the underlying error and the psychology that clings to these patterns of public (dis)order — lending mortar for the process of re-imagination. I underwent an assault against the formative powers of habitual error and their corrosive manifestations on the function of true religion. I strove to uproot these ill-effects through exposure (*see* Ephesians 5:11) — seeking earnestly to replace them with new habits toward the purpose of public engagement. And through it all, I arrived at a simple, yet formidable solution to capture on paper; for it requires the products of instinct and action, rather than words and lectures. A solution based on a simple word I inherited: *tropism*.

The Bending Ideal

Having confronted my understanding, the work to cure this bred error began through the remedies of a *bending* pedagogy. It was a new work of public theology rooted in the image of a broken Savior, who emersed himself with the unclean bodies of his time and emerged not only pristine, but radiant.

So, what is this bending ideal? From a conversion standpoint, this is a difficult process to describe and does require several constitutive commitments. The bending ideal requires time to unpack in its manifesting qualities and in the various rudiments required for formation. While James K.A. Smith provides an intellectual and psychological dimension to my thinking, Charles Glenn offers a second, more practical layer in his description of The Salvation Army and its division-wide programs that allow for local congregations to meet the social, material, and spiritual needs of the local population. Glenn writes, "[i]n

5 Willie James Jennings, Acts 69 (2017).

6 *See Matthew* 21:23-27.

7 *See* Smith, *supra* note 2, at 40.

8 Smith, *supra* note 1, at 55.

9 James K.A. Smith, Awaiting the King 175 (2017).

10 *Id.* at 179.

the face of changing external influences, this hierarchal organizational model has served the Army well as it has striven to live out a distinctive value system while adapting to meet the needs of the surrounding society."[11] For better or for worse, the model for tropism provides a built-in mechanism for social adjustment. A process that allows for balancing pragmatism with conservation: for foundationalism and progress. A method exemplified by an impulse away from a rigid uniformity based on the stiffness of columns and toward the life-giving stimulations of a bending reed. It is an administrative process that represents a reformed embrace of uncertainty and the preaching of mystery.[12] It is a Christian public policy rooted in the welfare of an idiosyncratic community that prioritizes the giving of self over self-aggrandizement.

The concept of the bending ideal requires work — a product of long development and formation. It requires methods for rebuilding an impulse, as well as an intellectual capacity for challenging Christian convictions to better form thoughts based on divine light and cultural stimulants (i.e., *tropism*). It is a challenge, firstly, to *listen* — mindful of the advice of Tomáš Halík when he calls for "eyes that look progressively ahead, feet that stand firmly on the soil of tradition, hands that intervene actively in the world's affairs, and attentive, hearing ears that silently and contemplatively listen to the beating of God's heart."[13] This means a cultivated taste for change and a threshold for interference: insulating around the tremors of our conviction's antifragile rebars that help stabilize our resolve in areas of uncertainty. What one court in discussing the common law called "a living, growing body, cautiously flexible enough to meet new conditions but firmly tied to the precepts of the past."[14]

This, secondarily, also means developing a taste for change; or what Herbert Spenser in writing on history described as the adjustment of human character to the circumstances of living. In his evolutionary studies, he saw that education could only do so much in the inculcation of knowledge for the adaptation to circumstances. The mind itself was left to the evolutionary process and would take its time to adapt accordingly.[15] This is an important ideal for the reinforcement of our convictions when faced with strange new errors for which we have to give an account through the filter of our own preconceptions. An intellectual adjustment must be possible, one that doesn't leave the manufacturing of impulse to the whims of evolutionary or societal inbreeding. While the adaptative model of Spenser is right that the inculcation of new knowledge is an imperative piece to the mechanisms of adjustment, the individual must also seize on the opportunities inherent in those changes to effect useful social policies. Not only is there a mechanism to respond, but a corresponding process of growth that makes one able to form habits; which, once formed, increasingly govern behavior until eventually they become the "overwhelming determinants of social and personal character."[16] These habits will be of sacral significance and bend toward the selfless creation of gestures of repair within the embedded community.

Importantly, the habits that match the intellectual engagement toward a creative design for innovation requires an aspect of social realism. In his book, *The Corrosion of Charity*, Robert Whelan hits on this underlying principle in his description of faith-based social services in late-Victorian Britain:

> It was the need to be always trying out new approaches, to see which would work most effectively, which gave these private charities their greatest advantage over blanket systems of state welfare. They were able to initiate new approaches which could be quickly abandoned if they were unsuccessful, or expanded to meet a growing demand.[17]

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11 Charles L. Glenn, The Ambiguous Embrace 224 (2000).

12 *See Ephesians* 6:18-20. Ross Douthat observes that the distinguishing markers between heresy and orthodoxy is a commitment to mystery and paradox. Ross Douthat, Bad Religion: How We Became a Nation of Heretics 10 (2012).

13 Tomáš Halík, Patience with God 79 (Turner trans., 2009).

14 *Coleman v. Hous. Auth. of Americus*, 381 S.E.2d 303, 305 (Ga. Ct. App. 1989).

15 *See* Lawrence A. Cremin, American Education: The Metropolitan Experience (1876-1980) 390 (1970).

16 *Id.* at 402.

17 Robert Whelan, The Corrosion of Charity: From Moral Renewal to Contact Culture 17 (1996).

While this bending ideal requires a footing in the soil of a rooted theology, it also provides an elastic bending potential to adjust to the public policy concerns of the present moment. Able to expand and retract based on the success and failures of an approach grounded on dialogue, realism, and love. It is through these three pillars that we can find a renewed ethics of public engagement that balances the Pauline call to become "all things to all men" marked by an innovative leaning toward the patterns of the world so that those same patterns can sense the shattering awakening of God's design.[18] In his self-abnegation, Paul offers a fluent balance between his identity in Christ ("though I am free from all") and his responsibility to others ("I have made myself a servant to all"), in the hope that he might win them over. Instead of lording over the people in his newfound status, Paul leads from the position of weakness so that the power of Christ may be made manifest in him.

In his commentary on 1 Corinthians, David Garland rightly notes that this is not some promotion of anti-intellectualism, but a rejection of intellectual vanity.[19] Though Paul has reason to boast in his flesh, he counts all things as loss for the sake of the surpassing worth of knowing Christ and sharing the mystery of the Gospel.[20] As John Chrysostom indicated, Paul operated under the conviction of free choice and love, possessing "an insatiable desire for the salvation of mankind."[21] A *cruciform* instinct marked by flexibility and an earnest desire to sacrifice one's way of living and one's way of thinking for the good of another.[22] Paul understood the cultural and ethical limitations of his neighbors and learned to bridge the divides by taking on their lifestyles and conditions.[23] He took his freedom in Christ, connected it to the pastoral demands of evangelical life, and utilized the culturally relevant methods of communication to reach others with the Gospel.[24] But, lest we forget, Paul does have his own interest in play: "I do it all for the sake of the gospel, that I may share with them in its blessings."[25] And, while Paul serves as the proverbial tuning fork, it is Christ that plays the role of conductor and symphony. Here, we find the fullness of the bending ideal in action.

The Bending Savior

The vision of the bending ideal is taken directly from the examples of Christ and perhaps nowhere more manifest than when Christ dines with outcasts like Levi to the mortification of the Scribes and Pharisees, who questioned his motivation for eating with "sinners and tax collectors."[26] Surrounded by an intellectual tradition for orthopraxy, they saw his association as a breach of ritual purity required of teachers of the Law, who knew better than to recline at the table of those "who maintained the traditions less strictly."[27] As D.A. Carson explains, though eating with sinners "entailed dangers of ceremonial defilement," Jesus and his disciples did so anyway — extending to the corners of need, regardless of the desires of the religious elites.[28]

This same breach of custom is offered again when Christ extends himself to touch the leper thus disqualifying himself from ceremonial purity and in the process flaunting the rules of those same religious leaders who only saw a one-way transfer of defilement to the clean, instead of a

18 *1 Corinthians* 9:22; *Ephesians* 5:14.

19 David E. Garland, 1 Corinthians 84 (2003).

20 *See Philippians* 3:1-11.

21 John Chrysostom, *Homily* 22(4).

22 *See* Thomas R. Schreiner, 1 Corinthians 181, 193-94 (2018).

23 *See* Richard B. Hays, First Corinthians 153-54 (1997).

24 *See* Anthony C. Thiselton, First Corinthians 144-45 (2006).

25 *1 Corinthians* 9:23.

26 *Mark* 2:13-17.

27 William L. Lane, The Gospel of Mark 104 (1974). Citing to the Mishnah, Lane further provides anecdotal support for the proscription: "He that undertake to be trustworthy (i.e., a Pharisee) may not be the guest of one of the people of the land." *Id.* at 104 n. 42.

28 D.A. Carson, Matthew (Chapters 1 through 12) 224 (1995) (commenting on the parallel verses in Matthew 9:10-13).

transfer of clean water to the defiled.[29] In his act of compassion, Jesus extended himself to a person traditionally separated from the general public — restoring him to the community-at-large and to social participation. As William Lane explains, Jesus did not hesitate to act in violation of the cultic and ritual system's regulations when the situation demanded compassion: "the ceremonial law gives place to the law of love when the two come into collision."[30]

And, the same can be seen when Jesus allowed a woman of poor repute to draw near and wipe his feet with her hair and anoint them with ointment. To this, the Pharisees grumbled, saying: "[i]f this man were a prophet, he would have known who and what sort of woman this is who is touching him, for she is a sinner."[31] To them, the issue, wrote Darrell Bock, was one of defilement, brought on by her "ongoing contact with Jesus" and his tolerance of her action.[32] To Christ, here was a person in need and his reach was sufficient to reach her. Was he complicit in her lifestyle choices by allowing her to make this gesture of humility and adoration? By no means! But, in the eyes of the religious leaders of the day, Jesus — in bending to the tax collectors, lepers, and sinners — became associated with their defilement and secured the mark of an "unclean" violator through his own policy of practice. In refusing to draw near to the sick and lowly, the religious leaders of the day retained their cultural purity, while forsaking the purification that comes through God. Rodney Stark aptly summarizes the significance of these instances and the revolutionary effect they had on the moral equality of citizens — not only in words, but in deeds. "Over and over again," he writes, Christ "ignored major status boundaries and associated with stigmatized people . . . thereby giving divine sanction to spiritual inclusiveness."[33] What Jesus did was put the Gospel into practice — preaching and living the word amidst the sick and dying; and, bending to their needs, both physical and spiritual.

Conclusion

In his important work, *The Children of Light and The Children of Darkness*, Reinhold Niebuhr made this statement which speaks to the underlying value that my theology of tropism envisions: "For man's spirit is a unity, and the most perfect vantage point of impartiality and disinterestedness in human reason remains in organic relation to a particular center of life, individual or collective, seeking to maintain its precarious existence against competing forms of life and vitality."[34] Jesus is able to speak to the conscience of his generation without reverting to self-righteous pageantries and power politics. He was able to embody the perfect degree of a rigid self-restraint and an elastic governance toward those brought under his communal jurisdiction. He walked in perfect balance to satisfy the precarious existence that the Church must manage in its daily involvement with competing forms of life and vitality. Christ gave us the contours for living together in what Darrett Rutman eloquently called "the shifting patterns of a kaleidoscope to which are constantly being added new pieces of colored glass."[35]

If the Church remains wedded to a system based on rigid mechanics and a psychology of retreat, it will never survive a changing milieu without doing great harm to its capacity to participate in public life. Sure, it will gather to itself a host of like-minded devotees and feel justified through its state of persecution to dig deeper into its theological pre-commitments, but it will have little influence on those who have need of a physician. It will never thrive in a dynamic public square without cultivating a renewed imagination and a distinctive public policy that bends to worldly stimulations. While sensing need, it will no longer be seen

29 *See Ezekiel* 36:25; *Matthew* 8:1-4.

30 Lane, *supra* note 27, at 87.

31 *Luke* 7:36-40.

32 Darrell L. Bock, Luke (Volume 1: 1:1- 9:50) 697 (1994).

33 Rodney Stark, Victory of Reason 76-77 (2005).

34 Reinhold Niebuhr, *The Children of Light and the Children of Darkness*, *in* Major Works on Religion and Politics 392-93 (Elisabeth Sifton ed., 2015).

35 Darrett B. Rutman, Winthrop's Boston: A Portrait of a Puritan Town 274 (1965).

as the center for shelter — suspended in the immanent frame and operating inside with closed windows.

What the Church needs to embrace is tropism. An instinct fueled by constant reflection, renewal, and reform that serves to channel those same mechanics back into the system in an innovative process for refining the stems for adaptation. A system based on rewiring the error psychology into a psychology of mettle defined by the principle of holy abandonment:

> For the bodies of those animals whose blood is brought into the holy places by the high priest as a sacrifice for sin are burned outside the camp. Jesus also suffered outside the gate in order to sanctify the people through his own blood. Therefore let us go to him outside the camp and bear the reproach he endured. For here we have no lasting city, but we seek the city that is to come.[36]

Only by following the examples of Christ in his collision with the world will the self-righteous refrains that "[w]e have Abraham as our father" grow silent. Only then will the refrains of "come unto me ye who are weary and heavy laden" ring loud.

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36 *Hebrews* 13:11-14.

Just As We Imagine

*by Craig A. Stern**

Introduction

I imagine that every reader of this essay knows the story. Americans used to rest their law upon transcendent principles of justice, often finding those principles in the Bible and the Christian tradition. Law was fundamentally to right wrongs. Not that Americans pursued this project with perfection. Nevertheless, they aspired to do so, and met with some success, even if success sometimes took a while.

Now, Americans typically design their law to mediate competing interests. Law is simply a tool to shape society according to the wills of those who have the say-so on how those interests balance.[1] To be sure, American law itself yet retains much of its earlier contours, but Americans, and especially their leaders, view the law as power to solve social problems. Why shouldn't the government act to meet our needs, to ease our loads, to make us happy?

These two distinct models of law, painted here in broad strokes, embrace two distinct uses of the imagination. As with all our faculties, the imagination can serve diverse ends. Imagination can serve the truth, pressing the limits of understanding, leaning upon the known to extend the reach and influence of truth. Or, imagination can serve the will, fabricating fancies, projecting figments to follow desire. The development of human law, like most human developments, springs from imagination, and it takes form from the type of imagination from which it springs.

Law on Order

Americans have made of their law a tool in the hands of their social engineer lawyers.[2] Law is only a social means[3] adapted to human purposes and divorced from any metaphysical reality beyond human experience.[4] Although law in some respects has long been seen as a tool, an instrument, law has not always been seen as *just* a human tool as in the eyes of instrumental*ism*. Practicing lawyers always have seen law as a tool they might use to accomplish the ends their clients desired, but that does not render the law a human tool only. Flints are good tools, and water is channeled for human purposes.

The shift in the law occurs when a "transcendent" purpose, say, corrective justice, yields to an "imminent" purpose, say, social engineering. Then the law no longer expresses a truth beyond human will. Instead, it is wholly a human artifact, molded with an eye to consequences finding favor with forces in control.[5] As the Handlins described their classic project in assessing the early efforts at this transformation, "We seek in this study the meaning of men's efforts to bend an immediate portion of the visible universe to

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* Senior Lecturer, Regent University School of Law. The author thanks Anton Sorkin for the impetus to write this essay, and Michael and Denise Crews and Jo Joynes for their help.

1 *See* Albert W. Alschuler, Law Without Values 3 (2000).

2 Michael P. Schutt, Redeeming Law 19 (2007).

3 Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. Legal Educ. 247, 250 (1977).

4 Robert Samuel Summers, Instrumentalism and American Legal Theory 30-31 (1982).

5 *See* Alschuler, *supra* note 1, at 100-03. Often, the actual consequences of these artifacts have been disastrous. *See, e.g.*, Doug Bandow, Beyond Good Intentions 35-49 (1988); Milton Freidman, Capitalism and Freedom (1962); F.A. Hayek, The Constitution of Liberty (1960); Friedrich A. Hayek, The Road to Serfdom (1944); Carl F.H. Henry, Aspects of Christian Social Ethics 116-21, 146-71(1964); Gabriel Kolko, The Triumph of Conservatism (1963); Marvin Olasky, The Tragedy of American Compassion (1992); Thomas Sowell, Race and Economics 194-04 (1975); Thomas Sowell, Black Rednecks and White Liberals 33-35, 161-62 (2005); Melody M. Heaps & James A. Swartz, *Toward a Rational Drug Policy: Setting New Priorities*, 1994 U. Chi. Legal F. 175, 175-76; Darrell Issa, *Unaffordable Housing and Political Kickbacks Rocked the American Economy*, 33 Harv. J.L. & Pub. Pol'y 407 (2010); Stephen Moore & Tyler Grimm, *Straw Man Capitalism and a New Path to Prosperity*, 33 Harv. J.L. & Pub. Pol'y 475 (2010).

their wills."[6] Controversy masks the time of the arrival of the new instrumentalism.[7] To be sure, the welfare state brought with it the notion that law exists simply to better society. But, more fundamentally, spiritual impoverishment invited a system of laws without transcendent roots.[8] Religious discourse suffered banishment from secular universities,[9] and law schools served an ersatz religion that went not much deeper than the rules of law.[10] Reason, democracy, and progress may have been the professed tenets of the new creed,[11] but the exercise of power came to dominate the cult, power to serve the will of those in control as they might pursue fashionable ends like "fairness."[12] Such ends, conveniently evading rigorous definition and limit, can be made to call forth law of any stripe. Political will manufactures law. Human beings are the only lawmakers in town. "[T]heir judgment and their dignity proceed from themselves."[13]

Imagine That

"Someone has said of pragmatism that it is fine in theory but it doesn't work in practice."[14] Of course, if the theory of pragmatism is simply a mask for power, it may work in practice well enough. Ungrounded in transcendent truth and spun from human will, it is hard not to see contemporary American law as the product of the vain imagination of our hearts.[15] "It may be impossible to restore the ancient Judaic and Christian foundations of our legal tradition. But it is important . . . to recognize that it is the disappearance of those religious foundations that gives power to the convictions of the utopian nihilists . . . ."[16] "In a fallen world the imagination can function as both an instrument of salvation and a source of perdition depending on how the will uses it."[17] Only God himself prevents the builders of Babel from doing what "they have imagined to do."[18]

If we will to have our law independent of transcendent truth, we shall use our autonomous imagination to guide our steps. If we will to have our law dependent upon transcendent truth, upon the God who reveals transcendent truth, we shall use a different sort of imagination. The first type of imagination manufactures truth, the second finds it. It is only the second that can bear the name "Christian Imagination."

Imagine This

The Christian Imagination searches out God's truth, complementing God's revelation through and in Christ, connecting dots and extrapolating beyond them so that God's truth fully illumines. It constructs, but it constructs on true principles, on rock, not sand.[19]

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6 Oscar Handlin & Mary Flug Handlin, Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861, at xv (rev. ed. 1969).

7 *See* Neil Duxbury, Patterns of American Jurisprudence 451-52 (1995).

8 *Id.* at 418.

9 Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. Legal Educ. 509, 513 (1987).

10 Cramton, *supra* note 3, at 249.

11 *Id.* at 252, 262.

12 *See* Alschuler, *supra* note 1, at 8; Harold J. Berman, Law and Revolution 41 (1983); Cramton, *supra* note 3, at 259.

13 *Habakkuk* 1:7.

14 Harold J. Berman, Faith and Order: The Reconciliation of Law and Religion 337 (1993).

15 *See Genesis* 6:5, 8:21; *Deuteronomy* 29:19; *Jeremiah* 23:17; *1 Chronicles* 28:9; *Romans* 1:21; *2 Corinthians* 10:5.

16 Berman, *supra* note 14, at 339.

17 Marianne Djuth, *Veiled and Unveiled Beauty: The Role of the Imagination in Augustine's Esthetics*, 68 Theological Stud. 77, 89 (2007); *cf.* Russell Kirk, Eliot and His Age 127 (1971) ("Not simply, then, at the hollowness of nameless folk is 'The Hollow Men' directed: it is aimed, too, at such as Wells and Shaw and Russell, at the intellectual enemies of the permanent things, those who wander amusingly into contrived corridors of the spirit—and beguile others, less gifted, after them. Also, as Hollow Men, Elliot has in mind the politicians of his time—though in Britain the Conservatives then held office. Political measures devoid of moral imagination are hollow indeed. In foreign affairs, as the politicians held out fond promises of the perpetual peace to be achieved through the League of Nations, they stumbled toward a greater war; in affairs domestic, the politicians were proceeding to settle for the boredom of the welfare state, rather than to undertake the hard and austere labor of thinking through a program for restoring true community.").

18 *Genesis* 11:6.

19 *See Matthew* 7:24-27.

"[T]he imagination is one way we know the truth."[20] Further, the imagination is involved in every act of belief or knowledge, including, in accord with Saint Augustine, knowledge of the present.[21] "To inquire into what God has made is the main function of the imagination,"[22] and "[t]he imagination of man is made in the image of the imagination of God."[23] Again, as Saint Augustine holds, the imagination, a central faculty for him, produces a right ordering of memory leading to God himself, joining with memory to leave mere signs behind and instead truly to apprehend things themselves.[24] This use of imagination mines truth. It reveals what sense and intellect themselves cannot perceive.

At the same time, however, imagination is a creative faculty.[25] To connect dots is to make connections. To imagine is to think about things that are not and so to create.[26] But, imagination in service to truth fills gaps rather than fantasizing its own reality.[27] "[T]he duty of the imagination [is] that of following and finding out the work that God maketh."[28] "[T]he end of imagination is *harmony*. A right imagination, being the reflex of creation, will fall in with the divine order of things as the highest form of its own operation . . . ."[29] Perhaps a right imagination in the law operates in not so high a form. The main point for our purposes, however, is that an imagination that submits to truth significantly differs from one that does not and is more likely to align with God's will for the law than an imagination set merely upon human will. If only by analogy, sound imagination in the law supplements and fosters the principles of law God has revealed, eschewing principles of another origin.

Just Their Imagination

The imagination that connects dots is familiar to students of the common law. Cases raising questions of law yet to be answered by the courts call for this very faculty. Precedents mark the dots and the new opinion connects them to mark a new dot. Classically, the connection was understood to declare the law, to announce a truth—how else avoid subjecting parties to an ex-post rule?—and yet create a new formulation of positive law.[30] This use of imagination in the law is commonplace and supplies an opportunity for both types of imagination that this essay has described.

But this essay will proffer three more specific examples of Christian Imagination in the law. In these three, the imagination controls while maintaining a posture in support of truth, not in opposition to it.

* * *

The first example is the assize of novel disseisin of Henry II, instituted in the late twelfth century. Before this assize, the law protected the right to hold land but by ponderous, unreliable procedures that allowed the possessor great advantage over an adverse claimant out of possession.[31] Private war offered relief to the dispossessed, and "[a] man, it was felt, should be prepared to fight for his rights, and have recourse to the courts only if self-help failed."[32] Furthermore, the law did not treat this

20 Leland Ryken, *Preface* to The Christian Imagination 11, 11 (Leland Ryken ed., 1981). Ryken calls the imagination "a combination of mind, senses, and emotions." *Id.*

21 John M. Frame, The Doctrine of the Knowledge of God 343 (1987).

22 George Macdonald, *The Imagination: Its Functions and Its Culture, in* The Imagination: Its Functions and Its Culture, William Shakespeare and Other Essays 1, 2 (London, Sampson, Low, Marston & Co. enlarged ed. 1893).

23 *Id.* at 3.

24 Todd Breyfogle, *Memory and Imagination in Augustine's* Confessions, 75 New Blackfriars 210, 217-22 (1994).

25 Macdonald, *supra* note 22, at 2.

26 Frame, *supra* note 21, at 340, 342.

27 *See* Breyfogle, *supra* note 24, at 216 (regarding filling gaps in the memory).

28 Macdonald, *supra* note 22, at 12.

29 *Id.* at 35.

30 *See* 1 William Blackstone, Commentaries on the Laws of England 69 (Gryphon Ed., Ltd. 1983) (1765-70); 3 *Id.* at 327; *cf.* Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 Harv. L. Rev 353, 357-77 (1978) (describing the development of the common law as case-by-case discernment by courts of the necessary or reasonable implications of the enterprise giving rise to the case at hand).

31 *See* W.L. Warren, Henry II 332-36 (1973).

32 *Id.* at 336.

self-help as wrongful dispossession so long as the winner "had right, as well as might, on his side."[33] Henry put an end to this approach. He outlawed forcible dispossession if unsupported by the judgment of a court, regardless of the justice of the claim to self-help, and treated it as a punishable breach of the king's peace.[34]

It is Henry's next step, the assize of novel disseisin, a momentous development in Anglo-American law, that especially illustrates imagination. Pollock and Maitland call "the principle that was to be enforced . . . new and startling."[35] Berman notes that "Bracton, writing some 90 years later, said [the assize] was 'excogitated and contrived after many night watches.'"[36]

Imagination yielded a procedure that was "elegantly simple."[37] The procedure rested upon the concept of seisin, "a subtle but important transformation of the very concept of possession."[38] Unlike possession itself, seisin is the *right* to possess, a right unknown to the Roman law.[39]

> The heart of the action was the use of a jury (known as a "jury of recognition") to answer questions of fact put by a royal justice. There were two questions. First, had the plaintiff, as he alleged, been disseised of the freehold in question, unjustly and without judgement, within the time limit laid down? Secondly, did the person who was alleged by the plaintiff to have committed the disseisin in fact do so? Judgement was given according to the jurors' replies. The losing party, whether plaintiff or defendant, was adjudged to be "at the King's mercy," and the justices decided what monetary penalty (known as an amercement) was appropriate. A successful plaintiff might be awarded damages to compensate him for the loss of revenues he had suffered.[40]

The victorious plaintiff also was restored to possession. The procedure featured elements that rendered it extremely effective. The clarity and precision of the questions put to the jury obviated the usual defensive procedures and eased the finding of the few relevant facts. Preliminary steps put in motion by the writ made judgment swift and enforceable. The writ itself described the members of the jury and it was to be returned to the judges with the names of the jurors who had investigated and found the facts and were to be present before the judges. "[I]t is remarkable how little was left to chance or put at the mercy of avoidable error. Every item in this procedure had been carefully thought out."[41] The assize of novel disseisin is a brilliant work of imagination, deftly crafted to do justice to keep the peace, anticipating obstacles, employing available institutions, and creating mechanisms to make the remedy sure. The beauty of this assize rendered it a model for others, especially darrein presentment for benefices and mort d'ancestor for inheritance.[42]

The assize of novel disseisin was a breakthrough. Henry used the assize to move disputes into the royal courts,[43] part of the "historical expansion of royal jurisdiction in the reign of Henry II that marks the origin of the English common law . . . . Henry created the English common

33 *Id.*

34 *Id.* at 337.

35 1 Frederick Pollock & Frederic William Maitland, The History of English Law Before the Time of Edward I 155 (Liberty Fund, Inc. 2010) (2d ed. 1898). Plucknett, however, does find related precedent in both German and canon law. *See* Theodore F.T. Plucknett, A Concise History of the Common Law 358-59 (5th ed. 1956).

36 Berman, *supra* note 12, at 456.

37 Warren, *supra* note 31, at 338.

38 Berman, *supra* note 12, at 455.

39 *Id.*

40 Warren, *supra* note 31, at 338.

41 *Id.* at 340; *see also id.* at 337-41.

42 *See* Plucknett, *supra* note 35, at 359; 1 Pollock & Maitland, *supra* note 35, at 157-58; Warren, *supra* note 31, at 341-48.

43 *See* Plucknett, *supra* note 35, at 359.

law by legislation establishing judicial remedies in the royal courts."[44] The ordinance establishing the assize of novel disseisin "was in the long run to prove itself one of the most important laws ever issued in England."[45]

> The ownership of land may be a matter for the feudal courts: the king himself will protect by royal writ and inquest of neighbors every seisin of a free tenement. It is a principle which in course of time can be made good even against kings. The most famous words of Magna Carta will enshrine the formula of the novel disseisin.[46]

* * *

The assize of novel disseisin was a grand effort of imagination in the service of justice, but grander still was the distillation of fourteen centuries of Roman law into the *Corpus Juris Civilis* by the Byzantine Emperor Justinian. By the time Justinian acceded to rule in 527, he had found the law of his empire a rich but jumbled affair that made the operation of law expensive and unreliable.[47] After assembling an up-to-date collection of statutes—the Code—"Justinian conceived the . . . ambitious project of a compilation, the Digest or Pandects, which would preserve the best of the classical literature and provide a statement of the law in force in his own time."[48] The drafters "were to abridge and alter as much as was necessary to ensure that the work contained no repetitions, no contradictions, and nothing that was obsolete."[49] "Even to envisage such an undertaking was remarkable . . . ."[50] "The scale of the undertaking was heroic. Justinian declares that nearly 2,000 'books' were read, containing 3,000,000 lines, and that they were reduced to 150,000 lines. And even these 150,000 lines give us a work one and a half times the size of the Bible."[51] "Instead of the ten years allowed by the emperor to produce the work, [the team of lawyers], under the wakeful eye of the amateur lawyer Justinian, took only three. It was a miracle."[52] The Digest is the crowning achievement of Justinian, the core of the *Corpus Juris Civilis*. In addition, a textbook, the Institutes, accompanied the Digest, and provided the third component of the *Corpus Juris Civilis*.[53]

Justinian imagined this great compendium of Roman law in pursuit of his duty to govern justly after God's design.[54] His work was "inspired in part by the belief that Christianity required that the law be systematized as a necessary step in its humanization."[55] "The authority of Laws," he declared, "happily disposes things divine and human, and puts an end to iniquity."[56] By assuring that Roman law was in accord with the nature of things,[57] Roman law would reflect the laws of nature, "which . . . remain always stable and immutable, rooted as they are by some kind of divine Providence," as the Institutes puts it.[58] "What impressed later generations, besides the admirable construction of Justinian's lawbooks, was their claim to universal validity. . . . That claim was not based on force, but on reason. It was an appeal to the intrinsic dignity of law, rather than to its power of compulsion."[59]

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44 Berman, *supra* note 12, at 456-57.

45 1 Pollock & Maitland, *supra* note 35, at 155.

46 *Id.* at 156 (footnote omitted).

47 Craig A. Stern, *Justinian: Lieutenant of Christ, Legislator for Christendom*, 11 Regent U. L. Rev. 151, 157 (1998).

48 Barry Nicholas, An Introduction to Roman Law 40 (1962).

49 *Id.* (footnote omitted).

50 *Id.*

51 *Id.* (footnote omitted).

52 Stern, *supra* note 47, at 159.

53 *Id.*

54 *Id.* at 157.

55 Berman, *supra* note 12, at 168.

56 Alexander Passerin d'Entrèves, Natural Law: An Introduction to Legal Philosophy 24 (1951).

57 *Id.* at 33-35.

58 *Id.* at 32.

59 *Id.* at 23-24; *see also id.* at 31-32, 35.

Justinian's reformation of the law also sought to render it more just and humane in specific provisions. For example, he favored debtors, slaves, and women.[60] He altered the law of marriage to reflect its covenantal character.[61] Perhaps most important, he fostered equality before the law.[62] Justinian's imagination embraced such reforms in the interest of the greater humanity of the law, even as it embraced the momentous work of compiling the sum of Roman law.[63]

The product of Justinian's imagination became a permanent monument of Christendom. His immediate end was to foster justice by improving law and legal practice in his empire.[64] But "Justinian's importance lies in his having succeeded, at a moment when the ancient world was dissolving, in collecting together, in a form which could survive, the literature of the Roman law."[65] The *Corpus Juris Civilis* "remains the foundation of law for most of Christendom and beyond."[66] "The *Institutes* proved to be one of the most widely read law books of all time, and possibly the most influential. . . . Even today [i.e., in the early twenty-first century], it is required reading for law students in many countries."[67] For Justinian's work of imagination—profound, magnificent, and enduring—Dante placed him in Paradise:

> Caesar I was, Justinian I am.
>
> By the will of the First Love, which I now feel,
> I pruned the law of waste, excess, and sham.[68]

* * *

The common law is not without its own imaginative magisterial compiler—albeit one lacking the benefit of imperial rank or legislative authority beyond a seat in Parliament.[69] In fact, Sir William Blackstone's *Commentaries on the Laws of England* (1765-70) has been called "comparable only to that . . . civil law masterpiece, *The Institutes of Justinian*."[70] Blackstone was a serious student of Roman law,[71] and "[t]he *Commentaries* has been likened to Justinian's work in both content and effect."[72] One thing shared by both projects is their rarity. Plucknett writes of Blackstone's "achieving the astonishing feat of writing his commentaries. At this time it is difficult to appreciate the daring of Blackstone."[73] "'Twice in the history of English law has an Englishman had the motive, the courage, the power, to write a great, readable, reasonable book about English law as a whole.' First it was Bracton, and five hundred years later Blackstone."[74] Others have claimed that the *Commentaries* "became the most important work ever written about the English common law."[75]

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60 Stern, *supra* note 47, at 162.

61 *Id.* at 162-63.

62 *Id.* at 163.

63 It should be noted that much of Justinian's own lawmaking is found in the Novels, an updating appendix to the Code. *Id.* at 161.

64 *Id.* at 162.

65 Nicholas, *supra* note 48, at 44.

66 Stern, *supra* note 47, at 157.

67 Daniel R. Coquillette, The Anglo-American Legal Heritage 5 (2d ed. 2004).

68 Dante Alighieri, The Paradiso 71 (John Ciardi trans., New American Library 1970) (1320) (Canto vi, lines 10-12).

69 Plucknett, *supra* note 35, at 286.

70 Coquillette, *supra* note 67, at 437.

71 John H. Langbein et al., History of the Common Law 838 (2009); Craig A. Stern, *A Mistake of Natural Law: Sir William Blackstone and the Anglican Way*, 4 U. Bologna L. Rev. 325, 335 (2019).

72 Stern, *supra* note 71, at 335.

73 Plucknett, *supra* note 35, at 382.

74 *Id.* at 286.

75 Langbein et al., *supra* note 71, at 838.

Blackstone's brilliant achievement in the *Commentaries* sprang from his Christian imagination. From all appearances, Blackstone took his Christian faith seriously and was committed to the Anglican expression of that faith.[76] His *Commentaries* reflects this commitment.[77] Blackstone

> sought beauty in the law, a beauty lent to English law by God's design in natural law. The Commentaries continuously pursues this project and shapes its discussion from principles, being structured to align positive law with natural law and organized to demonstrate order in the English law from divine simplicity.[78]

For Blackstone, author of "a treatise on architecture and many verses" and also "a Shakespearean scholar of some ability,"[79] beauty reflected God himself and provided a touchstone of truth, a guide to sound imagination. Blackstone used architectural metaphors in analyzing the law and aesthetic criticism to express his condemnation. For example, regarding the threat of ill-considered statutes:

> The common law of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new-dress and refine, with all the rage of modern improvement. Hence frequently it's [sic] symmetry has been destroyed, it's [sic] proportions distorted, and it's [sic] majestic simplicity exchanged for specious embellishments and fantastic novelties.[80]

But a proper use of imagination follows the lines of beauty, a beauty that signals God's own work.

Beauty in the law shines most in its reasonableness. Blackstone addressed his *Commentaries* to a broad audience for whom the attraction of the law would lie in its reasonableness,[81] so along with its elegant prose the *Commentaries* is "insistently reasoned."[82] Blackstone featured explanations—sometimes imaginative indeed—to engage the interest of his generalist audience.[83] But more important, "Blackstone sought reasons for the law as a mark of God's own perfection . . . ."[84] "[R]eason and reasonableness are notes of God's order and Providence."[85] "[O]verall emphasis on reasonableness in the law . . . largely shapes the *Commentaries*."[86] Accordingly, Blackstone's "legacy was to establish the primacy of theory in the literature of the common law. Rules have reasons. The task of a legal writer is to explain not only what the law is, but why."[87]

The why of the law as Blackstone explained it rested upon what we these days call natural law.[88] He "held that the natural law was the only sure guide to English law," and so English law provided "a handbook on natural law."[89] Even in its historical development, English law shows how "Providence gradually works the natural law into human law."[90] The operation of Blackstone's imagination, finding in English law links to God's transcendent legal order, had revolutionary consequences. "In his pages we find the first comprehensive attempt to state (as far as then possible)

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76 Stern, *supra* note 71, at 340-41.

77 *See* Stern, *supra* note 71.

78 *Id.* at 353 (footnotes omitted).

79 Plucknett, *supra* note 35, at 285.

80 1 Blackstone, *supra* note 30, at 10.

81 Plucknett, *supra* note 35, at 286.

82 Langbein et al., *supra* note 71, at 838.

83 *See* Plucknett, *supra* note 35, at 286.

84 Stern, *supra* note 71, at 360.

85 *Id.* at 365.

86 *Id.* at 361.

87 Langbein et al., *supra* note 71, at 841.

88 *See* Stern, *supra* note 71.

89 *Id.* at 353.

90 *Id.* at 354; *see also id.* at 355-58.

the whole of English law in the form of substantive rules."[91] This attempt Plucknett found "astonishing" and "daring."[92] The focus of the *Commentaries* upon substantive rules of law rather than on procedure was "both its pathbreaking distinctive and also the daunting obstacle to its creation."[93] It also led to its great success.

And especially to its great success in America.[94] "The American founders were steeped in the *Commentaries*," and beyond this,

> Blackstone's heavy reliance on natural law theory facilitated the retention of the English common law in the immediate post-Revolutionary period, by helping to distance the common law from its imperial roots in North America. The successful outcome of the Revolution raised the question of [sic] why Americans should continue to adhere to rules laid down in ages past by judges serving a distant sovereign, whom the Americans had just defeated in the Revolutionary War. Blackstone's book, by conflating common law and natural law, supplied the answer that the Americans needed. English common law would apply in the new nation not because the king's judges commanded it, but because the common law embodied enduring principles of justice. In this way Blackstone gave the common law a seeming universality that allowed the Americans to retain it despite its English taint.[95]

Furthermore, "Blackstone's *Commentaries* also made possible the American innovation in legal education, which resulted in the emergence of university law schools."[96] Again, this effect of the *Commentaries* came from Blackstone's imaginative explanation of the natural law foundation of English common law. "By making law a field of principle, Blackstone made it resemble the fields that were already at home in the university—philosophy, theology, mathematics, the natural sciences. In this way Blackstone facilitated the movement to university legal education in the United States."[97] Blackstone, like Henry II and Justinian, changed the course of legal history through exercising an imagination that extended the reach of God's justice in human law.

The Brightest Heaven of Invention

Human law follows the human imagination, for good or ill. Ungrounded in the truth, that imagination is apt to create chimaeras, forging human law to ends (and through means) less than truly fit for human beings.[98] But a soundly ordered imagination, in service to truth, can make of human law a testimony to God's law, and so an extension of his rule. God created us to imagine. It is for us to imagine to glorify him.

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91 Plucknett, *supra* note 35, at 382.

92 *Id.*

93 Stern, *supra* note 71, at 328.

94 *See* Plucknett, *supra* note 35, at 287.

95 Langbein et al., *supra* note 71, at 842.

96 *Id.* at 843.

97 *Id.*

98 *See* sources cited *supra* note 5.

Imagination and Political Order in Robert Nisbet's *The Quest for Community*

*by Luke C. Sheahan**

Introduction

"Man is what he *thinks!*"[1]

So writes the American sociologist Robert Nisbet in his 1975 classic *Twilight of Authority*. It might be more precise to say that man is what he imagines himself to be. I do not mean, and Nisbet certainly did not mean, that man dictates reality through his cognition, that if the human race collectively imagined itself to be a race of pink unicorns it would be true. Nor is he arguing for a more mild form of relativism, that man could change something fundamentally human in his nature by thinking to make it so. Nisbet's point is that man will *act* according to what he *thinks* himself to be. Nisbet elaborates, "[Man] is what he thinks he himself is, what his fellows are, and what the surrounding circumstances are in their deepest reality. Above all, man is what he thinks the transcending moral values are in his life and the lives of those around him."[2]

Man will build social institutions based upon what he imagines himself to be sociologically and what he believes to be the purpose of his existence. If man believes himself to be a creature of religion, man will build religious institutions and act religiously. If man believes himself primarily a *political* animal, he will build political institutions and act politically. If man believes himself primarily a *social* animal, man will build social institutions and act socially. If man believes himself to be truly from a race of pink unicorns, then he will run around on all fours and neigh at his neighbors. If many men believed this, whatever else they might do, they would certainly not build cities, businesses, universities, households, and other markers of civilized society. This, of course, does not mean that the human race would become a race of pink unicorns, but that man will construct his social reality to fulfill the purpose for which he imagines he exists. Nisbet writes, "Behind each of the structures or types that we deal with in the history of society is, inevitably, a complex pattern of ideas and ideals, for human behavior is nothing if not purposive."[3] Much of what human beings do in the realm of social and political action is a result of what they think matters, which is in turn derived from what they think they are.

Below I sketch out a link between a particular conception of the imagination—what man thinks he is—and concerns with notions of community that Nisbet grapples with in his famous book *The Quest for Community.* Nisbet argues that the pattern of alienation common in the twentieth-century Western world was the result of the intrusion of political power into previously autonomous social spheres. More specifically, Nisbet is concerned "with the impact of certain conceptions of political power upon social organization in modern Western society."[4] These conceptions of political power are the result of certain imaginative constructions through which human beings conceive their world and determine what constitutes moral action and moral order within it. The imagination is more than reason and belief because it implicates ideas and patterns of behavior that transcend arid doctrinalism and rise to the level of inspiring visions. Nisbet writes, "Insensibly, ideas, ideals, and values form patterns in time, patterns which often, as in the case of religious and philosophical systems, are greater in each case than the sum of the parts.

* Assistant Professor of Political Science, Duquesne University. Luke is featured on Episode #116 of the *Cross & Gavel* podcast. See inside back cover for QR Code.

1 Robert Nisbet, Twilight of Authority 213 (Liberty Fund 2000) (1975).

2 *Id.* at 213.

3 *Id.*

4 Robert Nisbet, The Quest for Community: A Study in the Ethics of Order and Freedom xvii (2010).

And once human beings become aware more or less directly of these patterns, in whatever sphere, these too operate to inspire and to motivate."[5] In short, these patterns capture the imagination.

In *Quest*, Nisbet sketches out two forms of thinking, monism and pluralism, drawing from William James' classic dichotomy,[6] and two general patterns of political order that emerge from monism and pluralism respectively.[7] Monism in political thought insists upon the fundamental unity of the people as a whole and it relies "heavily upon the State and its formal agencies of function and control."[8] This monistic conception of specifically democratic politics articulates an idea of "the people" divorced from historical and social context, freed from social bonds through the exercise of political power. Individuals are abstracted from their existing loyalties and centers of authority and treated as the central units of the state. In contrast, the pluralist approach to politics sees the people not as a unitary whole, but as ineradicably diverse, with loyalties among a variety of social authorities vying for influence. In the pluralist way of political thinking, "the State emerges as but one of the associations of man's existence."[9] It is neither the highest nor the most comprehensive. There are other associations of human existence and they matter, some even more than the state.

While many thinkers may be categorized as monists or pluralists, two eighteenth-century figures typify these ways of thinking and set the tone for these respective traditions in modern thought. Nisbet associated monism with the eighteenth-century French philosopher Jean Jacques Rousseau and pluralism with the eighteenth-century British statesman Edmund Burke. Both figures play an important role in Nisbet's analysis. I attach each of these tendencies in political thought to two forms of the imagination as described by the Harvard Professor Irving Babbitt—the idyllic imagination, which Babbitt associates with Rousseau, and the moral imagination, which Babbitt associates with Burke. I then demonstrate how Nisbet's understanding of these fundamental philosophical positions orient individuals and societies to pursue the "quest for community" in specific and juxtaposed ways, shaping our fundamental political institutions and processes.

Imaginations Idyllic and Moral

Irving Babbitt, early twentieth-century professor of French literature at Harvard University, described the cognitive process as an interplay of the faculties of will, imagination, and reason. The will is the faculty whereby man chooses, the reason is the means through which man perceives the world around him, and the imagination is the faculty through which he conceives the world, its being and significance, and the contours of the choices before him.[10] While much modern Western thought is oriented toward understanding the reason, Babbitt believed the imagination is more fundamental to the thrust of human cognition. He described it as "the true driving power in human nature."[11] The reason is important, but ultimately it operates upon the material produced by the imagination and it operates to justify or to discredit what the mind has already *imagined to be important and true.*[12] For Babbitt, man is what he imagines himself to be.

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5 Nisbet, *supra* note 1, at 213.

6 William James, A Pluralistic Universe (Library of America 1987) (1909).

7 I applied this dichotomy to First Amendment rights. *See* Luke C. Sheahan, *Freedoms Like a Fox: The Constitutional Community and First Amendment Rights*, 1 PRRUCS 23, 23-30 (Spring 2020). I've also discussed it as essential to Nisbet's political theory. *See* Luke C. Sheahan, *Conservative, Pluralist, Sociologist: Robert Nisbet's Burke*, 28 Stud. in Burke and His Time 28, 28–63 (2019); Luke C. Sheahan, *Edmund Burke and Pluralism in the Historical, Political, and Sociological Thought of Robert Nisbet*, 30 Stud. in Burke and His Time 140, 140-148 (2021) [hereinafter Sheahan, *Burke and Pluralism*].

8 Nisbet, *supra* note 4, at 230.

9 *Id.* at 231.

10 Irving Babbitt, Democracy and Leadership 34-36 (Liberty Fund 1979) (1924).

11 Irving Babbitt, Rousseau and Romanticism 21 (Transaction Publishers 2009) (1919).

12 Babbitt was not religious, let alone Christian. And, yet, his understanding of human cognition and the imagination are nearly identical to the explicit Christian understanding of C.S. Lewis. *See* Luke C. Sheahan, *The Shared Humanism of Irving Babbitt and C.S. Lewis: Will and Imagination in* That Hideous Strength, 29 Humanitas 5, 5-42 (2016).

Babbitt's concept of the imagination manifests in two ways, either through an "idyllic" model or through a "moral" model. The idyllic imagination conceives of a world that is inherently good, but of institutions that are flawed. It flatters the individual by conceiving him as fundamentally unfallen. Blame for social ills falls upon the arrangement of social institutions. Linking the "idyllic imagination" to the work of Jean Jacques Rousseau, Babbitt writes, "The guiding principle of [Rousseau's] writings . . . is to show that vice and error, strangers to man's constitution, are introduced from without, that they are due in short to his institutions."[13] Since man as Rousseau imagined him does not exist in contemporary society, as we are apparently corrupted by our social institutions, Rousseau projected him into a mythical past, a "golden age of phantasy,"[14] where he was free to be good because he had no institutions to corrupt him.

Rousseau's imaginative vision exerted an enormous influence upon modern understanding of morality and politics.[15] His sentimental view of morality prioritized the feelings of the person, his emotional reaction, over concrete moral action. The emphasis upon conscience as the inner center of emotion transformed the concept of conscience "[f]rom an inner check into an expansive emotion."[16] The political implications of Rousseau's political philosophy are profound. The idyllic imagination projects a world where the vision of man as flawless could be realized through proper political arrangements. This imaginative orientation tends toward a monist view of politics. If flaws are not the result of human nature, but of social institutions, then the proper solution is the suppression of social institutions beyond those specifically designed to realize man's true goodness.[17]

Whatever the moral pretensions of the idyllic imagination, Babbitt suspected that it very often was a justification of an immoral will. He explains, "[Rousseau's] notion that evil is not in man himself, but in his institutions, has enjoyed immense popularity, not because it is true, but because it is flattering."[18] Conceiving man's will as inherently moral, and the world as the source of immorality, the idyllic imagination posits that whatever corruptions and privations we meet in this life originate outside of the individual mind and conscience. Thus, these evils can be alleviated and even extirpated through the assertion of power, which generally takes the form of political power, to undermine the influence of these institutions on individuals' lives.[19] Rousseau's vision of the political state is tailor-made to realize man's good by freeing him from his social obligations. This intolerance of any institution that is not oriented toward the centralized political power means squelching religion and family, two traditional sources of loyalty and personal meaning that predate political structures.[20]

Babbitt links the moral imagination to Edmund Burke, Nisbet's prime example of a modern pluralist thinker. Burke wrote vigorously against the excesses of the French Revolution and the political thought of Rousseau.[21] Burke's moral imagination is grounded in the historic understanding of morality as right action and an understanding of basic human flaws that cannot be extirpated, even if they can be assuaged, through human institutions. Babbitt sees a moral will as emerging from what he dubs the "inner check," the tendency in some human beings to constrain their lower impulses, their passions, and their will to power, to permit a higher will, a tendency toward moral action, to triumph.[22]

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13 Babbitt, *supra* note 10, at 99.

14 *Id.* at 102.

15 Irving Babbitt, Character and Culture: Essays on East and West 227 (Transaction Publishers 1995) (1940).

16 Babbitt, *supra* note 11, at 218.

17 Babbitt, *supra* note 10, at 115-16.

18 *Id.* at 302.

19 *Id.* at 151.

20 *Id.* at 116-18.

21 *Id.* at 121-23.

22 Babbitt, *supra* note 15, at 237-8; Claes G. Ryn, Will, Imagination & Reason: Babbitt, Croce, and the Problem of Reality 29-37 (Transaction Publishers 1997) (1986)

The moral imagination is associated with pluralism, a way of thinking that is reluctant to trust too much in the reason's ability to bring all of reality under a unifying vision.[23] It sees that reality is complex, perhaps too complex for the human mind to comprehend fully, which will need to simplify to the point of deformation what it attempts to explain by a unifying principle. In political thought, a plural orientation rejects political uniformity and desires a plethora of institutions—religious, filial, local, economic, and social—to diversify the social bond. These institutions act as a constraint upon individuals in what Babbitt termed their lower will, and focus their energies and attention toward the function of the group, which could be anything from proper worship of the divine, to the rearing of children, to professional development.

The Quest for Community

Robert Nisbet's classic book *The Quest for Community*, published in the height of Eisenhower's America in 1953, explores what he believes to be the fundamental human drive, the search for community. He writes, "The quest for community will not be denied, for it springs from some of the powerful needs of human nature—needs for a clear sense of cultural purpose, membership, status, and continuity."[24] He argues that certain historical and philosophical developments downgraded the functional importance of social groups to their members and replaced their functions and authority with that of the political state. Nisbet writes, "[T]he most decisive influence upon Western social organization has been the rise and development of the centralized territorial State."[25]

By the "State," Nisbet is not talking primarily about the institutions we generally associate with government power, presidents and parliaments, congresses and courts, or even for that matter, bureaucratic agencies.[26] The state is an "idea system," by which Nisbet means it is a "complex of ideas, symbols, and relationships."[27] It operates as an imaginative model, "a system of human allegiances and motivations."[28] Fundamentally, "the State," as Nisbet uses the term, is a monistic vision of political community. Beginning with Plato, the vision of the political community dominates the field of social philosophy. It is the primary vision of community that eclipses kinship, religion, voluntary associations, and local community in our image of the primary relationship between individuals.

War and the Vision of the One

Nisbet provides two accounts of the rise of the state, one historical and the other philosophical. Both contributed to an imaginative framework that imbues the state with overwhelming moral significance as the highest form of community. Historically, the political power emerges from the sort of military power that rises in the circumstances of war. In the earliest societies governed entirely by kinship, the first alternative source of authority to kinship was that of the war chief rising in times of disorder in contradistinction to that of patriarch and matriarch. War plays an integral role in a compelling vision of the one based only in part on necessity. Nisbet writes,

> [T]he fateful attraction of war has lain in the mobilization of energies, the focusing of actions into a single purpose, and the solidarity that is almost always created by the threat of a foreign enemy. The integrating effects of conflict . . . have surely been evident to military chieftains and commanders from the earliest times. And from such integrating effects can very often has come especially in the mass-based societies of the twentieth century, the sense—or illusion, as the case may be—of community.[29]

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23 Sheahan, *Burke and Pluralism*, *supra* note 7, at 140-48.

24 Nisbet, *supra* note 4, at 64.

25 *Id.* at 91.

26 *Id.* at 92, 249-51.

27 *Id.* at 92.

28 *Id.*

29 Robert Nisbet, The Social Philosophers: Community and Conflict in Western Thought 14 (Heinemann Publishers 1974) (1973).

The sense, or illusion, of community emerges from the military organization itself. Nisbet continues, "Under the spur of danger ahead, of dangers and hardships faced communally in the past, of the fruits of victory won in common effort, and of the moral exhilaration that comes from achieving objectives in concert, the feeling of community can be very intense indeed."[30]

This intense feeling of community, of unity in common cause, accompanies the absolute authority of the chieftain. The conditions of war necessitate the total discipline of this authority, but they also give it a grand and exhilarating quality, an imaginatively attractive dimension. It is out of this new form of authority that rises the "all-important concept of sovereignty . . . the central element of the political community."[31] Often in times of war societies make their transition from primarily kinship orders to political orders. "Only when the needs of war and the requirements of almost constant military service make kinship structure in a social order obsolete does the territorial tie tend to become victorious over the personal relationships of kinship society."[32] Nisbet explains,

> [H]istorically and sociologically there is the closest relation between war and the state. There is no known historical instance of a political state not founded in circumstances of war, not rooted in the distinctive disciplines of war. The state is indeed hardly more than the institutionalization of the war-making apparatus; its earliest function everywhere is exclusively military; its earliest rulers, generals and war lords. Only much later begins the work of transferring to the political arm functions previously resident in other institutions; family, religion, and voluntary association of one kind or another. Only later too, when philosophy becomes one of the creations of the human mind, begins the work of seeking other than military justifications for the institution of the state.[33]

The transition from military community to political community requires the transition from viewing political power vertically to viewing it horizontally. Rather than simple obedience of subjects to the king, generally a person or at least an office descended from the original war chief, political bonds become "a kind of horizontal relationship among individuals, with power made immanent in the Nation, with rights and duties made dependent upon the Nation . . . the People as a unity ruling over the people as a multitude."[34] Obedience to the warlord transitions to obedience to the people at large. Absolute membership in the war community transmogrifies into absolute membership in the political community. This too is an imaginative development. When thinking about politics abstractly, which is the only way to think of something as large as the nation-state, people must be brought to think in terms of individual relationships to each other as creating the state. There is no better image of this than the original cover of Thomas Hobbes' *Leviathan*, with the sovereign holding sword and scepter, but composed entirely of the atoms of individual citizens.

This rise and development of the state operated as "a process of permanent revolution" upon social organization, undermining the plethora of social groups that arose in the medieval period.[35] These traditional social groups provided individuals with much more than economic sustenance; they provided the psychological security of a close community. As these groups receded and their functions were increasingly coopted by the state, they failed to operate effectively in the lives of individuals as they once had. The loss of meaningful economic and political function meant the loss of communal import. While the state grew in functional significance and power, it did not and could not provide the psycho-

30 *Id.*

31 *Id.* at 21.

32 *Id.* at 24.

33 *Id.* at 93.

34 Nisbet, *supra* note 4, at 94.

35 Nisbet uses Otto von Gierke's description of Rousseau's "General Will." *Id.* at 91.

logical security that it had made impossible for other groups to perform, so individuals were increasingly alienated from the social order. By undermining the authority and status of social groups, the state set the stage for the problem of community that featured so prominently in the twentieth century.[36]

Nisbet sees war as creating the structure of political power in the state. Following from this, growing out of the sense of the necessity of the centralized war power, come philosophers of the political community who justify the state, not in terms of the necessities of war, but in terms of justice, law, reason, and community—the ultimate moral resource for all individuals.[37]

Vision of Political Community

The transition from war community to political community is an imaginative one through which the state takes on an idyllic imaginative façade. In political philosophy, state power is not merely the war power at peace, but the ultimate source of morality. Plato is the first to engage in this project of justifying state power in terms not of necessity, but justice. In *The Social Philosophers*, published twenty years after Quest, Nisbet again takes up the theme of man's quest for community. He argues that Plato makes "the ideal of politics, of political power, of the political bond, of the political community, the most distinctive and most influential of all types of community to be found in Western philosophy."[38]

The Greek *polis* was in its death throes as Plato wrote. Whatever the greatness of Athens in its past, conflict between various factions tore Athens apart in Plato's day. Out of this vision of anti-community, came Plato's vision of ultimate community.[39] The political community as a philosophical concept comes into existence in Plato precisely to counter the sense of lost community, "to emancipate the individual from the torments and stresses of the faction ridden, rootless, and anomic society of the time, and to give the individual precisely the haven, the moral fortress, that Plato believed man's nature to require."[40] Nisbet notes the presence of a powerful, almost religious mysticism in Plato's thought. His arguments are thoroughly rational, but undergirded by an "inexhaustible faith" in his vision of political community as salvation from social turmoil. Plato's political community is "alone capable of endowing man with the highest of all forms of freedom; as man's emancipation from politics in the sense of strife and division but at the same time his achievement of a final oneness with others through the political bond alone."[41] For Plato, "the absolute freedom of the individual could be combined with the absolute justice of the State."[42]

Plato's influence in shaping the imaginative vision of community for subsequent Western thinkers is enormous. Through historical developments in the late medieval period, especially the rise in the incidence of war, the increasing power of kings founding modern nation-states, and the decline of the Catholic Church as a unifying force, Plato's vision of political community becomes especially enticing in the modern world. The English philosopher Thomas Hobbes and the French philosopher Jean Jacques Rousseau are his most prominent modern students. For Nisbet, they are responsible for endowing the modern mind with an overwhelming vision of "the one."

Like Plato, Hobbes' construction of his political state is built upon the individual alone. All social groups are essentially derivative of the state. Absolute political power is justified by the salvific role of the state in creating political community, the only type of community Hobbes' monistic vision permits. The state does not merely enforce the social order. "Hobbes denies that any form of social order ever existed or can exist apart from the sovereign structure of the

36 *Id.*

37 Nisbet, *supra* note 29, at 94.

38 *Id.* at 106.

39 *Id.* at 109.

40 *Id.* at 111.

41 *Id.* at 116.

42 Nisbet, *supra* note 4, at 106.

State."[43] Hobbes famously describes the state of nature, human existence without the sovereign power, as "solitary, poor, nasty, brutish, and short." The state in Hobbes' conception is ultimately redemptive; it saves individuals lost and alone in the state of nature from an early and violent death, and provides the necessary order for individuals to survive and even to thrive. The contract between individuals and the sovereign must be absolute to make effective the redemptive actions of the state. Nisbet writes, "With the monolith of power that Hobbes creates in the State, there is little room left for associations and groups. Hobbes does not see . . . multifold sources of sociability and order. . . . They are breeding areas of dissension, of conflict with the requirements of the unitary State, not reinforcements of order and justice."[44] Family and church are both reduced to mere contracts. Children obey parents only through the children's consent, a myth of "perpetual contract."[45] The church lacks corporate freedom and is completely under the authority of the sovereign.[46] To allow otherwise would disrupt the unity of the state.

Rousseau's idyllic imagination takes the concept of sovereignty found in Hobbes to its logical conclusion. However, it isn't logic that makes Rousseau so influential and, in Nisbet's view, dangerous. It is his gift to cast absolute sovereignty as absolute liberty, to render the state's suppression of a plethora of communities as the ultimate form of community. Hobbes' argued for unity in the state out of the necessity of order, seeing civil society institutions as inherently chaotic. But, Nisbet argues, Rousseau's genius is that where "other writers have idealized [political community] in the interests perhaps of justice or of stability . . . Rousseau is the first to invest it with the value of freedom. Therein lies the real distinctiveness of his theory of sovereignty."[47]

Building on Plato's idyllic vision of the political community, "Rousseau sees the State as the most exalted of all forms of moral community. For Rousseau there is no morality, no freedom, no community outside the structure of the State."[48] The individual's complete autonomy from the conflict of allegiances and moral strife endemic in civil society is found in the absolute power of political community. The state liberates the individual from the authority of civil society by banning what Rousseau calls "partial associations" from the state.[49] "The individual lives a free life only within his complete surrender to the omnipotent State. The State is the liberator of the individual from the toils of society."[50]

The claims of traditional social groups, chiefly religion and kinship, are subsumed into the authority of the state. Religion can exist insofar as it reconciles individuals, not to God, but to the General Will. "It must reflect, above all, the essential unity of the State and find its justification in the measures it takes to promote that unity."[51] Christianity cannot be the official religion of the state because Christianity prioritizes religious law over secular law, the church over the state, and citizenship in the kingdom of God over citizenship in the kingdom of man. All this "would be the undoing of that unity indispensable to the true State."[52] Only a civil religion that undergirds the authority of the state is permissible.

Similarly, the family must exist solely as a means to produce and inculcate future citizens of the state. The family relinquishes the education of children to the state so that "the 'prejudices' of the father may not interfere with the development of citizens."[53] The end result of Rous-

43 *Id.* at 123.
44 *Id.* at 125.
45 *Id.* at 126.
46 *Id.* at 127.
47 *Id.* at 135.
48 *Id.* at 130.
49 *Id.* at 136.
50 *Id.* at 134.
51 *Id.* at 137.
52 *Id.*
53 *Id.* at 139.

seau's imaginative vision is complete unity in the state as the highest form of liberation from the oppressions of society. "Family relationship is transmuted subtly into political relationship; the molecule of the family is broken into the atoms of its individuals, who are coalesced afresh in the single unity of the state."[54] There is no place for any other associations, either traditional associations of religious order, family, guild, village, and the like, or even new voluntary associations. For Rousseau, the state grants ultimate freedom to the individual by liberating the individual from the corruption of social bonds.

This understanding of political society as the highest form of moral community suffuses our understanding of political power in the modern world.[55] Politics is the form of community that frees individuals from the corrupting bonds of religion, family, and association so that individuals may be their good, wholesome selves. This idyllic rendering of individuals as inherently good, society as inherently corrupting, and the state as inherently liberating is an imaginative vision undergirding our conceptions of law and politics. Nisbet writes in summary of Rousseau's political program,

> Not through kinship, class, church, or association can man be freed, for these are the very chains upon his existence. Only by entering into the perfect State and subordinating himself completely to its collective will will it be possible for man to escape the torments and insecurities and dissensions of ordinary society. The redemptive power of the sovereign State—this was Rousseau's burning slogan for the modern world.[56]

Rousseau's conception of freedom and political power exert enormous influence over the course (but not the origins) of the French Revolution.[57] It became an apology for both the individualism and the authoritarianism of the revolutionaries through its "ingenious camouflaging of power with the rhetoric of freedom, and in its investment of political power with the essence of religious community. Rousseau had succeeded in spiritualizing the political relationship and, in so doing, had removed the State conceptually from the ordinary realm of political intrigue and force."[58] The state has taken on a redemptive aura that colors our conception of everything it does.

The Pluralist Alternative: A Laissez Faire of Groups

Nisbet spends a great deal less time in *Quest* discussing the alternative to the monist political state so well-crafted in Rousseau's thought and manifest in the modern state in various forms. But he does provide some guidelines for what an alternative to the monist state might look like. In the last few pages of the book, he describes what he calls a "*laissez faire* of groups," by which he means a political context in which a variety of associations compete for individual allegiance against each other.[59] He doesn't reject the state's role in instantiating this order, but he does caution against permitting government administration to be imbued with the redemptive aura of the state as idea-system.[60]

Rather than a source of weakness, the moral imagination sees such inherent plurality as a source of strength for a political community organized upon plural principles.[61] Burke writes, "To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed towards a love to our country and to mankind."[62]

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54 *Id.* at 139-49.

55 *Id.* at 132.

56 *Id.* at 142.

57 *Id.* at 145.

58 *Id.* at 146.

59 *Id.* at 256-57.

60 *Id.* at 250-51.

61 *Id.* at 253-55.

62 Edmund Burke, Reflections on the Revolution in France 202 (J. C. D. Clark ed., 2001).

Furthermore, it is an essential component for the health and wellbeing of individuals who require social institutions such as the family, religion, and other associations to shape them into civilized beings. Burke describes families and neighborhoods as the "inns and resting places" of human beings as they cultivate love and virtue.[63]

The state as an idea system comes into its mature form with Rousseau and to its full historical instantiation in the twentieth-century totalitarian state.[64] The modern political system in its commitment to absolute sovereignty is derived from Rousseau's idyllic imagination which held that "only through the absolute, unitary power can man find freedom, equality, fraternity, and virtue. Freedom becomes freedom from other institutions, freedom to participate in Leviathan."[65] There is an alternative idea system, one that rejects the idyllic façade often accompanying the exercise of state power. It requires a moral imagination that accepts man's inherent limitations, what Christianity called his fallenness, and the necessity of a plurality of communities to cultivate his civility and humanity.

63 *Id.* at 366.

64 Nisbet, *supra* note 4, at 143.

65 *Id.* at 144.

Recalling the Sacraments: The Case of Penance

*by Elisabeth Lasch-Quinn**

A striking painting by the seventeenth-century French Baroque artist Nicolas Poussin (1594–1665) takes the viewer from the velvety depths of its background darkness to a foreground exploding with sumptuous colors, textures, and human expressions. Total immersion in the scene seems even to convey the tastes and smells of the food on a table laid with silver utensils and platters of fish, bread, and other dishes. Murmurs of conversation among the people gathered here almost seem to include us. One man's eyes look out and catch our own, as he gestures toward the food and across the table at one of the guests, as though centuries have not passed since he was brought to life by a painter's brush and pigment, and as though millennia had not already passed since the ancient feast depicted in the painting. Everything here makes one—whether someone at the dinner in the painting or someone viewing it—want to linger.

The painting is well worth lingering over. Poussin's works always are, both for their sheer beauty and for what they convey of their own times, the times they depict, and the timeless questions they explore. Taking our time with this one in particular helps us recall and reconsider a theme the cultural amnesia of our own times threatens to block from memory: the role once played by the sacraments in addressing the question of why and how we manage to live together. At first glance, the painting, with its colorful conviviality, might not seem to fit such a serious theme. Since the painting portrays a festive occasion, it could actually come as a surprise that the painting is called *Penance.* What kind of penance would find us comfortably ensconced in a scene of revelry such as this? Let's see by returning to the painting to get more of its details indelibly in mind and then proceeding to consider the larger theme to which it refers.

At first sight, the painting's background seems to hold only darkness but once our eyes adjust, as happens when we first go outside at night (called dark adaptation or onset of our scotopic or night vision), slowly we begin to see wisps and then distinct outlines of classical architecture: an archway, a lintel, and a row of ionic columns. The lively dinner scene nearer to us is cordoned off from this stonework by a black cloth hung in undulating drapes. At the center of the canvas, a light source coming from the left of the frame highlights the white of the tablecloth and the ruched covering of the cushioned rails that frame the rectangular table on three sides. A small crowd of young and middle-aged men gathers around the table, some leaning on the rail while daintily reaching for food and conversing and gesticulating intensely. A man raises a cup to drink what appears to be wine, judging from the various urns nearby, and broken off pieces of bread are strewn in between plates on the tablecloth.

Among the revelers are people waiting on the diners, carrying more silver platters. As sumptuous as the food, fabrics drape furniture and people alike in alluring hues ranging from soft yellows to a deep midnight blue, from burnt umber to a pale terracotta. Our eyes are drawn immediately by a luscious robe dyed a vivid crimson or carmine, as well as by lighting and gestures, to a figure of clear importance, a bearded man in the front left who reclines on a settee. He is clearly Jesus. He raises his right hand above the head of a woman who bends over his feet, her red-gold hair falling gently around them. Dressed in a flaxen robe, she touches him with exquisite delicacy, almost timidity. At the right front on another settee reclines a man dressed in an ecru robe. He looks much older than all the rest and a boy washes his feet over a large copper pot. Most people's eyes look toward Jesus, and the rest gravidly convey that they are thinking about him. The scene feels at once public and intimate, regal

* Professor of History, Senior Research Associate, Syracuse University

yet humble. Someone at the front of the canvas kneels on a stone floor, bending over a large vessel. A side table with sculpted horse or deer legs holds a gold two-handled pot.

How could this scene of comfort and intensity have anything to do with penance, a word we associate today with punishment—and for good reason, since it shares the same Latin root as penitentiary, *paenitentia* (penitence)? We can piece together clues with some reminders from the history of art, religion, and ideas to suggest some of the ways and why it matters. First, we must lay some groundwork by touching on the concept of a sacrament in general and of the sacrament of penance in particular. Then we will return to the painting this time to explore its content, with the help of the biblical passage to which it refers and scholarly interpretations of the painting. This will allow us to absorb the full resonance of the painting for understanding the sacraments and their potential for rethinking the ways we envision and inhabit our social world. But first, why is this so important today, when many are not even religious, let alone Christian?

The reason is, quite simply, that all is not well with the current state of our social and moral common life. With indices too numerous to list, our society is fragmented beyond what is desirable or even safe. From political polarization to community divisions and even internal conflicts within individuals, signs of division and disillusionment abound. Intellectual historians, philosophers, social critics, and others identify conditions paving the way for today's collision course of competing views—what Alasdair MacIntyre captures in the phrase "moral incommensurability."[1] While many forces exacerbate conflicts, ever fewer ways to address the resultant rifts, rage, and alienation present themselves. Few would contest the signs of widespread suffering. In search of answers, many consciously and unconsciously go along with what many scholars have described as the therapeutic cast of modern life, which sounds as though it would by design address widespread pain and disconnection with some kind of cultural therapy, but ends up dividing people even more.

As part of the long-term historical ascendancy of economic and social structures that encouraged and even relied on prioritization of the individual, peculiarly modern notions of self and society culminated in a new therapeutic individualism. In what social critic and sociologist Philip Rieff called "the triumph of the therapeutic," commitments to a shared sense of the sacred that had traditionally organized communities by conveying a moral basis for culture gave way to a modern ethos heralding freedom from constraints on the individual.[2] Since Rieff first presented his theory of culture in the 1960s, corporations' quest for ever-expanding markets further capitalized on the unleashing of desires large and small, which helped a notion of liberationist individualism become entrenched as the presumptive path to self-fulfillment. Shorn of a sense of why and how an individual freed from binding commitments to pursue the solitary project of radical self-definition can—or even should—manage to live around other people, institutions and social groupings of all kinds suffered from the loss of ways to renew themselves and even survive. As soaring rates of depression, anxiety, addiction, and suicide attest, so did individuals themselves. Confronting the bitter irony of therapeutic individualism—that modern individualism is hardly therapeutic—raises a desperate question: if our current culture has proven that it simply cannot provide the sources of fulfillment and satisfaction we seek, what, if anything, could?

An alternative vision of the human person—one that takes into account the full range of instincts, needs, and desires that motivate us and the modes of existence most conducive to fulfilling them—can emerge from the concept and practice of sacraments. While easy to dismiss as outmoded rituals with no role in the ambitious goals and fast pace of modern life, a fuller

1 Daniel T. Rodgers, Age of Fracture (2011); Alasdair MacIntyre, *Intractable Moral Disagreements, in* Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics (Lawrence S. Cunningham, ed., 1981); Alasdair MacIntyre, After Virtue: A Study in Moral Theory (Univ. of Notre Dame Press 2007) (1981).

2 Philip Rieff, The Triumph of the Therapeutic: Uses of Faith after Freud (Intercollegiate Stud. Inst. 2006) (1966).

sense of the sacraments hints at their relevance to the demands of everyday life. In *A Short History of Christian Thought*, Linwood Urban provides a basic definition of the sacraments as "rites or ceremonies performed to symbolize or help bring about a transformation in the lives of those who participate in them." The Western tradition (broadly defined as a cultural and intellectual history transcending particular periods, locales, and religious denominations) has commonly gravitated toward seven sacraments that survive in cultural memory even when not in active practice: Baptism, the Eucharist (the Lord's Supper), Confirmation, Matrimony, Penance, Unction (Anointing the Sick), and Ordination (Holy Orders). Of course, almost everything one says about the sacraments is subject to revision and reconsideration given the intricacies of religious history and theological differences. Urban puts it gently when he notes, "especially since the Reformation, important and fundamental disagreements have been the rule," given that, for many, such disagreements could become matters of life and death—a history he and many other historians chart with attention to the types of disagreements and their reasons.[3] Just two well-known examples are Protestant recognition of only two sacraments, Baptism and the Eucharist (the Lord's Supper), as opposed to the seven deriving from the Catholic tradition, and Protestants' view of the bread and wine of the Eucharist as symbolic versus the realism of Catholic transubstantiation. In terse phrasing that captures some sense of the riddle in the concept of the sacraments, Urban writes that "A sacrament brings about that of which it is a sign."[4] In Augustine of Hippo's phrase, a sacrament is "an outward and visible sign of an inward and invisible grace."[5]

In the case of the sacrament of penance, we get an immediate sense of what is lost when we forget about the importance of the sacraments. The word "penance" can have a foreboding sound and its history includes abuses and extremes at the hands of the cruel, the powerful, or the power-hungry. But our ideals are something separate, a vital resource to fight those very evils.

In his defense of its categorization as a sacrament in the *Summa Theologiae*, Thomas Aquinas describes the multi-faceted nature of the sacrament of penance:

> As Gregory says [Isidore, Etym. vi, ch. 19], 'a sacrament consists in a solemn act, whereby something is so done that we understand it to signify the holiness which it confers.' Now it is evident that in Penance something is done so that something holy is signified both on the part of the penitent sinner, and on the part of the priest absolving, because the penitent sinner, by deed and word, shows his heart to have renounced sin, and in like manner the priest, by his deed and word with regard to the penitent, signifies the work of God Who forgives his sins. Therefore it is evident that Penance, as practiced in the Church, is a sacrament."[6]

As presented here so succinctly, the four dimensions of the sacrament, which is also known as the "mystery of divine forgiveness," include: contrition, confession, penance, and absolution.

Given our secular age, it could strike anyone new to the sacraments as a revelation that the sacrament of penance is also known as the sacrament of reconciliation and the sacrament of confession. The *Catechism of the Catholic Church* currently lists it as "The Sacrament of Penance and Reconciliation," with this explanation: "Those who approach the sacrament of Penance obtain pardon from God's mercy for the offense committed against him, and are, at the same time, reconciled with the Church which they have wounded by their sins and which by charity, by example, and by prayer labors for their conversion."[7]

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3 Linwood Urban, A Short History of Christian Thought 255-57 (rev. ed. 1995).

4 *Id.* at 256.

5 Justin S. Holcomb & David A. Johnson, *Introduction, in* Christian Theologies of the Sacraments: A Comparative Introduction 1 (Justin S. Holcomb & David A. Johnson eds., 2017) (quoting Saint Augustine).

6 Thomas Aquinas, Summa Theologiae, pt. III, q. 84, art. 1.

7 Catechism of the Catholic Church, pt. II, sec. 2, ch. 2, art. 4.

Considered in crisis today, the sacrament of penance has declined dramatically at least since the 1960s, with many fewer people practicing it, and a new approach taken by the Second Vatican Council has not managed to reverse this crisis.[8] Many theologians and scholars are now calling for renewed attention to what they see as the vital role of penance. For just one example, Alex Kalathikattil paints the history of penance in broad brushstrokes to illustrate how we got here and what he sees is at stake in this decline of interest.[9]

While noting that the history of penance has innumerable other twists and turns, Kalathikattil traces an overarching shift across centuries from "an early period of one-time public penance" to its current "private, auricular, and individual" form. In early Christianity up to the sixth century, "canonical penance" (penance under canon law) was a once-in-a-lifetime event for the most egregious sins and usually took place near the end of one's life. Early forms of penance emphasized conversion and reconciliation to the church community after penance had been served. Influenced in part by the rise of "tariff penance" (a legalistic notion of paying a price for one's sins) and the monastic "Celtic form of penance" (which included new and old elements), penance coalesced after the thirteenth century into a repeatable, obligatory event initiated earlier in life. Later forms of penance moved the emphasis on conversion and reconciliation to confession and absolution (forgiveness of sins). This momentous development entailed, in the analysis of Kalathikattil and others, losing "the liturgical and communitarian dimension" and becoming more individual and private. While Thomas Aquinas' conception of penance spelled out a balance of the four aspects of the sacrament, this balance was lost when the public dimension was displaced by private forgiveness of sins. Community fell out of the picture and the lone individual remained at the center: "It is this move from conversion and reconciliation as the rationale of the sacrament, to forgiveness of sins as the purpose of the sacrament which augmented the privatization of the sacrament of reconciliation."[10] Kalathikattil sees this shift as a great loss, as it led to "the marginalization of the ritualized moment of reconciliation." He calls for a reinvigoration of the role of the sacrament by recalling that the essence of the sacrament of penance is reconciliation: "The rediscovery of the communitarian dimension of this sacrament is hinged on recognizing the sacrament as the sacrament of reconciliation."[11]

This historical change amounts basically to a change from conversion to confession. This change has paved the way for the psychologization of penance, in Kalathikattil's searching analysis, as the sacrament has now become unmoored from its theological grounding and its early practice: "The sacrament, instead of being a process that leads to personal conversion and reintegration into the community, has been reduced to 'a form of psychological liberation,' freeing oneself from the sense of guilt and in this sense has been reduced to a reconciliation with oneself and one's conscience rather than with the community." Earlier practice lent much greater gravitas to the sacrament of penance—and reconciliation—as a life-changing experience whereby one fully realized and atoned for one's sins by means of an inner transformation that was nothing short of conversion to a life aimed at moral goodness. But over time, the sacrament has lost its ballast: "Confession was the means to reintegration but now is the end. Unfortunately, we see that during the course of the centuries, the means became the end. That is, confession which was the means for reintegration became the whole sacrament."[12] Once the *telos* of the sacrament, reconciliation never arrived.

By looking at its history in this light, we can see how the sacrament, considered such a cause of wonder and gratitude that it is referred to as

8 Edward B. Fiske, *Vatican Revises Sacrament of Penance*, N.Y. Times, Feb 7, 1974, at A1.

9 Alex Kalathikattil, *The Sacrament of Reconciliation: Lessons from History and Prospects for the Future, in* Ongoing Renewal in the Church: Reflections from Patristic Tradition, Vatican II, and Pastoral Practice (Paul Pulikkan, Mathai Kadavil, & Peter De Mey eds., 2021).

10 *Id.* at 242–3.

11 *Id.*

12 *Id.* at 244–6.

the "mystery of divine forgiveness," now falls so far short that the concept has become obscured. Unlike today, early practice recognized that the fault for and propensity to sin was not confined to the individual, and the healing of the individual and the community were inextricable: "Particularly missing in the current form of the celebration are the community dimension of sin, the exercise of the priesthood of Christ by the whole Christian community and the whole process recognized as a way of life — *ordo paenitentium* — that acts as a sign of the need for the continuous conversion of the whole community."[13]

At the heart of this historical transformation lies the paradox that emphasis on the individual does not always deliver what is best for the individual. The shift to a quick and routine private confession might seem to make things easier for that individual: gone are prolonged periods of penitence; absolution supposedly serves its purpose. But while taking away the harsh aspects of community attention, the new form deprives the individual of the collective shoulders for the burden of sin. And the community does not have to renew its commitment any more. Today, we must go further and ask, what about a collective culture that actively encourages sin? Rather than a force that encourages sin, the community is supposed to be structured to help people not to sin. Today, we see antisocial messages of selfishness and greed taken to the extreme in everything from politics to the marketplace and beyond. In the modern form of confession, not only does the individual no longer need to become reconciled to the community, but the community no longer needs to be reminded of and made to renew its own commitments to moral living.

Forgetting that confession was historically embedded in the sacrament of penance and reconciliation leaves behind vital sources of meaning, reward, and hope. Once the moral system in which wrongdoing was understood, the sacramental underpinnings of the Western tradition's notion of punishment and reincorporation of the individual into the community—to say nothing of the need for renewal of community vows and collective responsibility—has all but vanished. In its place is a mechanistic conception of confession for those who still participate in the formal ritual. Yet the ramifications extend well beyond the Catholic Church confessional. One consequence of the historical change we have traced here is a legal system shorn of the meanings originally underlying it. "When it comes to the period of private penance, however," Kalathikattil writes, "sin would be seen more and more as a violation of the law."[14] Sin becomes conceived of as a crime instead.

Kalathikattil sees the ultimate trajectory of the sacrament as a profound "change in the form of the celebration of the sacrament." The word *celebration* of the sacrament stands out today, and this is a vital point. In its earlier form, the sacrament of reconciliation involved "conversion from sin" and "reconciliation with God, others, self, and nature," as well as an experience of "the forgiveness of God" and "acceptance by the community." It is a cause of celebration. This seems more logical once we remember that the sacrament of penance "is one of the sacraments of reconciliation, baptism, and Eucharist being the other two."[15] We know those are cause for celebration.

Kalathikattil makes a stirring case for a renewal of this sacrament by emphasizing it as a sacrament of reconciliation and as conversion not just for the individual but the community. In our time we see "a deep yearning for reconciliation and healing," he writes, calling for "a process of recontextualization of the sacrament." Christians need to be converted, but not as a one-time thing. They need "reconversion," and so does the entire community. He makes a strong case for the sacrament as celebration: "The celebration of penance in the Church, being a sacrament, is a liturgical celebration wherein the Church expresses her faith in the paschal mystery. Besides being an act of faith and worship, it is also a means whereby the repentant sinner accepts the offer of forgiveness gratuitously given and resolves to complete the process of conversion by living an ethical life—loving God and the whole of creation."[16]

13 *Id.* at 240, 247.

14 *Id.* at 246.

15 *Id.* at 246–9.

16 *Id.* at 250–3.

Now that we have thought about the sacraments and penance in particular, let's take another look at the painting in order to deepen our sense of what we see. Above we lingered over a close reading of its form, and now we should complete our look by considering its content. Like Poussin's other works, it contains a particular narrative. *Penance* depicts a passage from the New Testament that tells the story of the "feast of Simon" (Simon the Pharisee, not to be confused with Simon the Apostle). The painting was part of his second of two full series of paintings comprising the Seven Sacraments (*Penance* from the first series was lost to fire, but we know it according to drawings from other artists.) It is worth perusing the passage in its entirety to get a full sense of its literal and figurative meanings (Luke 7:36–50; King James Version):

[36] And one of the Pharisees desired him that he would eat with him. And he went into the Pharisee's house, and sat down to meat.

[37] And, behold, a woman in the city, which was a sinner, when she knew that Jesus sat at meat in the Pharisee's house, brought an alabaster box of ointment,

[38] And stood at his feet behind him weeping, and began to wash his feet with tears, and did wipe them with the hairs of her head, and kissed his feet, and anointed them with the ointment.

[39] Now when the Pharisee which had bidden him saw it, he spake within himself, saying, This man, if he were a prophet, would have known who and what manner of woman this is that toucheth him: for she is a sinner.

[40] And Jesus answering said unto him, Simon, I have somewhat to say unto thee. And he saith, Master, say on.

[41] There was a certain creditor which had two debtors: the one owed five hundred pence, and the other fifty.

[42] And when they had nothing to pay, he frankly forgave them both. Tell me therefore, which of them will love him most?

[43] Simon answered and said, I suppose that he, to whom he forgave most. And he said unto him, Thou hast rightly judged.

[44] And he turned to the woman, and said unto Simon, Seest thou this woman? I entered into thine house, thou gavest me no water for my feet: but she hath washed my feet with tears, and wiped them with the hairs of her head.

[45] Thou gavest me no kiss: but this woman since the time I came in hath not ceased to kiss my feet.

[46] My head with oil thou didst not anoint: but this woman hath anointed my feet with ointment.

[47] Wherefore I say unto thee, Her sins, which are many, are forgiven; for she loved much: but to whom little is forgiven, the same loveth little.

[48] And he said unto her, Thy sins are forgiven.

[49] And they that sat at meat with him began to say within themselves, Who is this that forgiveth sins also?

[50] And he said to the woman, Thy faith hath saved thee; go in peace.

This passage on the feast of Simon was widely known and portrayed in Poussin's time and before. A handful of some of the most famous paintings also based on the feast of Simon include Tintoretto's *Meal in the House of Simon* (1546/7), Veronese's *Feast in the House of Simon the Pharisee* (1567–70), El Greco's *Feast in the House of Simon* (1608–14); Peter Paul Rubens' *Feast in the House of Simon the Pharisee* (also called *Christ in the Home of Simon the Pharisee*, painted c. 1618–1620), and Barnardo Strozzi's *Banquet at the House of Simon* (c.1630).

Interpretation of Poussin's work in art history has undergone a recent shift calling for renewed attention to the religious content of his work. This especially interests us here because

it bodes well for the project of recalling the sacraments in practice and imagination. In an overview of the evolution of interpretations of Poussin's works, David Carrier presents "three Poussins": Poussin as formalist, Poussin as Stoic religious skeptic, and Poussin as Christian believer. In the 1920s, Roger Fry argued that what mattered in art was form, not the emotional content or dramatic narrative being communicated. In painting, this meant that the artist should purely focus on the character and relationship of forms within the space of the canvas and the best works allowed the viewer to do so.[17] He praised Poussin's paintings for their formal characteristics, which he thought stood apart from any narrative they depicted, which Fry found wanting, but irrelevant to the quality of the painting.[18] Writing in the 1950s against Fry's single-minded focus on form, Anthony Blunt emphasized content in his view of Poussin as "pictor philosophus" (painter philosopher). He drew on evidence of views held by contemporaries of Poussin that blended skepticism of the popular Roman Catholicism of their time with an interest in ancient "pagan" approaches to living, and saw Poussin's paintings through this lens of a Stoic skepticism. But Carrier points out that Blunt had scant evidence that Poussin himself actually held the views of the French libertine intellectuals of his time.[19]

More recently, a 2015 exhibition at the Louvre, "Poussin et Dieu" (Poussin and God), presented a religious reading of Poussin. Curators Nicolas Milovanovic and Mikaêl Szanto wrote the catalogue entries on the paintings, with the former concentrating on provenance and historical background and the latter on religious symbolism and theological context.[20] Their work joins numerous other views of Poussin's works. As a reviewer of the "Poussin et Dieu" exhibit wrote about schools of thought on Poussin's work: "There is no shortage of interpretations; Jacques Thuillier, in *Le Figaro of 7th September 1994*, opposed Poussin the 'free thinker' to Marc Fumaroli's Poussin 'the great Christian poet.'"[21]

In his dissertation published in 1997, Erick Wilberding pieces together the documentary record and combines this research with a close reading of each of Poussin's major religious paintings, including the *Seven Sacraments* series. He singles out each of the paintings in the series for individual analysis, including *Penance.* Wilberding takes up the thorny question in the Poussin scholarship of Poussin's motivations—was he a skeptical Stoic, libertine, person of faith?—by meticulously pursuing particular ideas and images Poussin either showed he knew about or likely would have encountered. In a reconstruction of the intellectual history of which Poussin was a part, Wilberding does not fall into the trap of assuming that Poussin shared ideas of others of his time, just because of proximity. Unlike those who have concluded, based on Poussin's incorporation of classical architecture and themes, that he must have shared the religious skepticism of his time, Wilberding argues that these themes actually dovetailed rather than competed with his orthodox Counter-Reformation Catholic views: "Both versions of *The Sacrament of Penance* reveal the artist's great interest in appropriating archaeological research for an accurately documented representation of Biblical history."[22]

Based on a hasty glance, Poussin's depiction of penance could be taken for abandon and revelry. Even those giving his work much more than a hasty glance sometimes interpret it this

17 Michael Fried, J. R. Herbert Boone Professor of Humanities, Johns Hopkins University, Tanner Lectures on Human Values at the University of Michigan (Nov. 2-3, 2001), *available at* https://tannerlectures.utah.edu/_resources/documents/a-to-z/f/fried_2001.pdf. Fried called Fry's approach as "anti-theatrical." Fry praised the lack of involvement of the viewer with the action of the painting as essential in allowing for an aesthetic response, as opposed to an emotional or personal one. While Fry greatly admired Cezanne for this reason, Fried calls attention to rare exceptions Fry found to the separability of form and drama.

18 David Carrier, *A Very Short History of Poussin Interpretation*, 35 Source: Notes in the History of Art 69, 72 (2016).

19 *Id.* at 69–80.

20 Pierre Rosenberg, *Poussin and God*, 157 The Burlington Mag. 561, 561–63 (August 2015).

21 *Id.* at 562.

22 Erick Francis Wilberding, History and Prophecy: Selected Problems in the Religious Painting of Nicolas Poussin 186 (1997) (Ph.D. dissertation, New York University).

way. An engraver who based an illustration for Petronius' Satyricon on Poussin's two versions of *Penance* even gave it a "pagan" twist. Anthony Blunt argues that Poussin "might not have been so shocked as we may think" given Poussin's "syncretism" of Christian and ancient Greco-Roman themes.[23] Blunt emphasized the interest Poussin had in details such as the *triclinium*, the couch along three sides of a table on which ancient Roman diners reclined, as revealing his openness to "pagan" beliefs.[24] But Wilberding makes a powerful case that such details are not at odds with, but rather support Poussin's devotion to religious themes. "Blunt discussed the use of the triclinium, but the antiquarian details go far beyond this single element," Wilberding argues. The paintings are "informed reconstructions of the biblical banquet as an antiquarian would have understood it in the 1630s and 1640s." Poussin's pursuit of accuracy in ancient architectural and other details fits with the desire shared by others of his time to narrate biblical stories with what the latest scholarship suggested was the greatest historical accuracy. About the two versions of *Penance* in the two series of sacraments, Wilberding says "The two commissions of these deeply religious paintings, so profoundly expressive of Counter Reformation piety and doctrine, make abundantly clear that these subjects were highly important to Nicolas Poussin."[25]

Once we put our sketch of the sacraments together with this alertness to religious interpretation of Poussin's oeuvre, lingering over Poussin's *Penance* brings us full circle back to our first impression. And, now we can accept the invitation to what is clearly a joyous celebration!

Looking at Poussin's *Penance* the way we have here primes us to recognize the sacraments in an infinite procession of artworks, cultural artifacts, and social practices. A heightened sacramental imagination can give us a sense of the importance of the sacraments both to understand the world we have inherited and also ways to live within it. Today's cultural amnesia, divisiveness, and polarization create a yearning and need for sacramental understanding in a way that transcends religious differences and theological specifics.[26] Once part of basic cultural literacy, our knowledge of the sacraments has fallen away. Like the architectural elements that become clear the longer we gaze into the darkness, the elements of the sacramental imagination can emerge through sustained attention to reading the ways the sacraments have been pictured by others. By picturing them, we can recall them. Without doing so, we risk losing sight of the bedrock of our social world, even the underlying reasoning behind our laws and mores.

The secular age has largely obscured the cultural memory that our laws and social mores were rooted in religion but even for those who think religion has no relevance, the concept of goodness does. The laws and social mores we have inherited were once imbued with a religious perspective. Without some reference to that perspective, we can no longer make sense of them and thus cannot find a way to handle our conflicts. George Kubler writes in *The Shape of Time* about the importance of form for meaning: "Every meaning requires a support, or a vehicle, or a holder. These are the bearers of meaning, and without them no meaning would cross from me to you, or from you to me, or indeed from any part of nature to any other part."[27] The remaining traces of the sacraments are what made collective life possible. For instance, in the case of reconciliation, without it we do not have the practices of apologizing or making amends when we have done something wrong. So instead, we are caught in the middle of confession, but there is no end in sight, no reward for honestly confronting our demons and worst behavior. There is nowhere to go. Rather than being stuck in a therapeutic purgatory that is at root unther-

23 Anthony Blunt, *A "Curious" Adaptation of Poussin's "Penance,"* 125 The Burlington Mag. 485, 485+487 (August 1983).

24 Anthony Blunt, *The Triclinium in Religious Art*, 2 J. of the Warburg Inst. 271, 271-76 (January 1939).

25 Wilberding, *supra* note 23, at 187.

26 *See generally* Roger W. Nutt, General Principles of Sacramental Theology 88-96 (2017) (resource on theological support for broader applicability).

27 George Kubler, The Shape of Time: Remarks on the History of Things ix (1962).

apeutic, the form and content of the sacrament of penance and reconciliation offers resolution and a new purchase on life. What would happen if we re-envisioned penance as reconciliation—as cause for celebration?

The sacraments can offer inspiration in a time of difficulty by offering a vision of hope and transcendence. Laela Zwollo emphasizes that sacrament to St. Augustine was something "much broader than the modern idea of sacrament as being bound to a particular ritual." His conception of sacramentum, inflected as it was with Neoplatonist notions of oneness and wholeness and the overcoming of division and separation, had a capacious meaning of a life-changing experience of unity with the divine.[28]

28 Laela Zwollo, *Augustine's Conception of Sacrament: The Death and Resurrection of Christ as Sacrament*, in De trinitate: Mystic Union between Christ and his Church 113, 138 (Liuwe H. Westra & Laela Zwollo eds., 2019).

"Life is Like a Deep River": Howard Thurman Reflects on the River

*by James Abbington**

I've known rivers ancient as the world and
older than the flow of human blood in human veins.
My soul has grown deep like the rivers.
I bathed in the Euphrates when dawns were young,
I built my hut near the Congo and it lulled me to sleep,
I looked upon the Nile and raise the Pyramids above it.
I heard the singing of the Mississippi
when Abe Lincoln went down to New Orleans,
And I've seen it muddy bosom turn all golden in the sunset.
I've known rivers; ancient, dusky rivers;
My soul has grown deep like the rivers.

Langston Hughes
"The Negro Speaks of Rivers"

Introduction

Howard Washington Thurman (1899-1981) was one of the world's most renowned and acclaimed authors, philosophers, theologians, educators, and civil rights leaders. As a prominent religious figure, he played a leading role in many social and human justice movements and organizations of the twentieth century. Dr. Walter E. Fluker declares:

> Thurman's biography, from his earliest exploration of the sense of Presence while hunting in the lonely woods, caressing the mystery and comfort of dark Florida nights, fishing in the Halifax Rivers and mediating under his old oak tree—to his life-long quest to create and sustain religious and democratic spaces where individuals and collectives might share common consciousness was part of a double-search.[1]

Always invested in the role of nature in theological reflection, those high moments of resolve and the possibilities inherent in this *double-search* were fraught with the ambiguities and contingencies of history and time—never quite arriving but always yearning for completion, wholeness, and harmony. Thurman's experiments at Rankin Chapel at Howard University, Fellowship Church in San Francisco, and Marsh Chapel at Boston University are examples of the attendant challenges of achieving common ground through religious experience in the institutional settings of churches and universities.

* Associate Professor of Church Music and Worship, Emory University

1 *See* Walter E. Fluker, *Creating and Sustaining Democratic Spaces: Reflection on Howard Thurman and Democracy*, *in* The Unfinished Search for Common Ground: Reimagining Howard Thurman's Life and Work (Walter E. Fluker ed., forthcoming 2023). The encounter between God and the individual is a cooperative affair; it is a double search: "Religious experience in its profoundest dimension is the finding of man by God and the finding of God by man." Howard Thurman, The Creative Encounter: An Interpretation of Religion and the Social Witness 39 (1972). Thurman apparently is referencing his mentor, Rufus Jones. In the foreword to his *The Double Search*, Jones writes "Life as soon as it becomes rich with experience is deeply interfused with mutual and reciprocal correspondence moving both ways from above down and from below up. Our conjunct lives can no more be sundered into separated compartments than the convex and the concave curves of a circle can be divided." Rufus Jones, The Double Search: Studies in Atonement and Prayer 6 (1904).

Each of these sites of ecclesial and non-ecclesial practices had its "fresh starts, its false starts, its risings and its falling."[2]

For Thurman, a primary source for exploration was the Negro spiritual—a folk song of the Negro's own creation that provided a means by which enslaved Africans in America could express themselves—their sorrows, joys, disappointments, fears, pain, suffering, and inspired expressions of religious interpretations. Uzee Brown, Morehouse College professor, friend, and colleague identifies four survival tools found in these songs: (1) spirituality, (2) creative ingenuity, (3) adaptability, and (4) the will to preserve. Thurman recognized the source material of these Christian songs: the Bible, both Old and New Testaments; the world of nature; and the raw experiences of religion that were the common lot of the people and emerged from their own inner life. These songs were not only artistic expressions, but they also asked questions, affirmed their faith, and reassured them that things would get better and that a better day was coming.

Within his creative religious beliefs, Howard Thurman accentuated the common ground and kinship of all people. He authored many journal articles and 20 books, and his eloquence in preaching and lecturing was celebrated at many institutions internationally. Some of his most famous and widely acclaimed books include *Jesus and the Disinherited*, *The Luminous Darkness*, *The Inward Journey, Meditations of the Heart, A Strange Freedom: The Best of Howard Thurman on Religious Experience and Public Life, The Search for Common Ground, The Growing Edge, Deep is the Hunger: Meditations for Apostles of Sensitiveness,* and *With Head and Heart: The Autobiography of Howard Thurman.* Thurman's major emphasis—that Christianity teaches cooperation among humankind—was incorporated into the Civil Rights Movement. Further, his religious mysticism drew lines to India, including the notion of the sacredness of life and Mahatma Gandhi's technique of passive resistance. Through Thurman, many of these ideas were communicated to Martin Luther King, Jr. and influenced the American Civil Rights Movement.

For Thurman, imagination is related to "spirit."[3] He suggests that the "mind *as* mind" evolves from the body as part of the unfolding process of potential resident in life; he argues that mind as such is the basis for the evolution of "spirit." The imagination as *mind-evolved spirit* continues the same inherent quest for community, which is resident in nature and in the body.[4] Thurman used the content of Negro spirituals to preach theological concepts, many of which are included in his awe-inspiring *Deep River* and *The Negro Spiritual Speaks of Life and Death.* In the fall of 1928, shortly after his return to Atlanta, Thurman gave his most extended five-part lecture series titled "The Message of the Spirituals," delivered at Spelman College's Sisters Chapel. This became a theme to which Thurman returned time again and again, culminating in the 1947 Ingersoll Lectures at Harvard Divinity School titled "Immortality of Man" (published later in *Deep River*).

Throughout *Deep River* and *The Negro Spiritual Speaks of Life and Death,* Thurman

2 "I believe that God is the Creator of existence, that God bottoms existence. So that from within the framework of my thought the totality of life on this planet—with all its limitations, its fresh starts, its false starts, its rising and its Falling—all of this is a lung through which the Creator of Life is bringing his breath into particular beings and manifestations." Quoted in Fluker, *supra* note 1; *see also* Howard Thurman, *America in Search of a Soul, in* A Strange Freedom: The Best of Howard Thurman on Religious Experience and Public Life 266 (Walter E. Fluker & Catherine Tumber eds., 1998); Howard Thurman, Democracy and the Soul of American (Peter Eisenstadt & Walter E. Fluker eds., forthcoming 2022).

3 Luther Smith captures this idea of "spirit" as the "breath of God" in creation, providing value and meaning to existence. He writes:

> Realizing and expressing itself in the material world, the work of the spirit is historical and political. It is the source for the definition of the individual, and the individual in relationship to the collective. As it discerns self, it discerns God and what it means to be a creature of God. . . . Spirituality is a way of life committed to understanding the nature and urgings of the spirit; the life organizes all it desires, energies, and resources so that they might be dominated by the spirit. Spirituality brings a harmony to living consistent with the peace and will of God.

Luther E. Smith, Howard Thurman: The Mystic as Prophet 12 (2007).

4 *See* Howard Thurman, Mendenhall Lecture at DePauw University: Community and the Will of God (February 1961).

uses literary arts to help illustrate the religious lessons in the Negro spirituals. In *Deep River*, he opens the reflection with Langston Hughes' 1920 poem "The Negro Speaks of River," which serves as the epigraph to this essay. Langston Hughes was a close friend of Thurman, whose poetry he admired greatly. One of the key poems of the artistic and literary movement known as the Harlem Renaissance, "The Negro Speaks of River" traces black history from the beginning of human civilization to the present, encompassing both triumphs (like the construction of the Egyptian pyramids) and horrors (like American slavery). The poem argues that the black "soul" has incorporated all this historical experience, and in the process has become "deep." The poem thus suggests that black cultural identity is continuous, that it stretches across the violence and displacement of slavery to connect with the past—and that black people have made vital, yet often neglected, contributions to human civilization.

In this collection, Thurman includes prophetic insight and profound reflections for select Negro spirituals, including: "The Blind Man," "Heaven! Heaven!," "A Balm in Gilead," "Deep River," "Jacob's Ladder," and "Wade in the Water, Children." Thurman believed that "the genius of the slave songs is their unyielding affirmation of life defying the judgment of the denigrating environment which spawned them. The indigenous insights inherent in the Negro spirituals bear significantly on the timeless search for the meaning of life and death in human experience."[5] In *Footprints of a Dream: The Story of the Church for the Fellowship of All People,* Thurman describes how he used the Negro spirituals in public presentations and in worship. He says:

> Several times during the years I preached a series of sermons on the religious insight of certain Negro spirituals. Each Sunday during this series, the choir would sing the spiritual as an anthem. This series was brought to a full-orbed climax in a public lecture on the theme, given at one of the large Jewish synagogues in the city. This particular lecture was prepared and delivered as The Ingersoll Lecture on The Immortality of Man at Harvard University under the title "The Negro Spiritual Speaks of Life and Death".[6]

Reflecting on the Negro spiritual "Deep River," Thurman says, "This is perhaps the most universal in insight, and certainly the most intellectual of all the spirituals. In a bold stroke it thinks of life in terms of a river."[7] I read here Thurman's use and understanding of the spiritual as a sort of functional music, as music that is communicative and, in fact, music that is reflective of the system that produced them. When enslaved Africans sang spirituals, they were singing them from an inner feeling, no doubt a kind of outward manifestation of an inner-living essence, feeling something very deeply, real, and authentic.

In "Deep River," his reflection is in close conversation with Langston Hughes' poem "The Negro Speaks of River." The same speech also includes a quotation from the Greek philosopher Heraclitus, an excerpt from the poem "Ulysses" by Alfred, Lord Tennyson, and the words of Jesus. Thurman even uses his own poetry to add yet another layer of insight and expression to his exposition of Negro spirituals. Thurman begins:

> The fascination of the flowing stream is a constant source of wonder and beauty to the sensitive mind. It was ever thus. The restless movement, the hurrying, ever-changing stream has been the bearer of the longings and yearnings of mankind for land beyond the horizon where dreams are fulfilled and deepest desires satisfied. It is not to be wondered at all in this spiritual there is a happy blending of majestic rhythm and poignant yearning:

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5 Howard Thurman, With Head and Heart: The Autobiography of Howard Thurman 216-217 (1979).

6 Howard Thurman, Footprints of a Dream: The Story of the Church for the Fellowship of All Peoples 74 (Wipf & Stock 2009) (1959).

7 Howard Thurman, Deep River and The Negro Spiritual Speaks of Life and Death 66 (1975).

> Deep River, my home is over Jordan.
> O, don't you want to go to that Gospel feast,
> That Promise Land where all is peace?
> Deep River, I want to cross over into campground.[8]

The analogy is fruitful with great meaning: life itself is a deep river. Thurman says, "I am interested here in how potential time as in-between-time allows for the reconstruction or revisability of language as sound using jazz as a metaphor." He continues that we, through our agency, "make the path" that leads to the river: "the river is timeless—before and after time—we are constantly in the stream of the river which flows inwardly and outwardly, forever ingressing and egressing—depicting two modes or reality—the inner and outer which are inseparable but experienced as modes of consciousness." In engaging Thurman, then, one is able to think alongside temporality and the relationship between time and infinity, and to register them as analogous to the flow of the river which empties itself into the sea. In sum, the analogy yields key insights from enslaved Africans and from their cosmological and theological perspectives; the river leads to a deeper appreciation of the African American past, which Thurman calls "flood time" in his reflection on death and freedom in the Negro Spirituals.

Thurman challenges the reader to reflect on a deeper meaning and says that to think of life as being like a river is a full and creative analogy. He continues with the first analogy:

> To think of life as being a river is an apt and almost universal analogy. The analogy is complete is the first place because the river has a very simple beginning, and it gathers in depth and breadth and turbulence, as it moves across the broad expanse of the continent till it gives itself up to the sea whose far-off call all waters hear. It is the nature of the river to flow. It always moving, always in flux. It is small wonder that Heraclitus reminds us that no man bathes twice in the same stream.[9]

Then he presents the second analogy:

> The analogy is complete in the second place because the river has flood times. There are times when the river ceases to be tranquil and easy going and beneficent, spreading peace and helpfulness throughout the land that it touches, and becomes a monster, reckless of good and evil, spreading pestilence and destruction along its reckless way. It is the flood time of the river.

Thurman makes this relevant to our lives by offering,

> Life is like that. There are times when your life or mind ceases to be even, balanced, lovely, and becomes violent, tragic, terrifying. Out of the depths of your tragedy or agony, you may cry, 'God is not in his Heaven, and all is *not* right with the world—life is evil and its perpetuation is a more monstrous evil.' It is the flood time of the river. It is then that one needs to remember that often the test of life is found in the amount of pain that can be absorbed without spoiling one's joy.[10]

He presents the final analogy:

> The analogy is complete in the next place because the river has a goal. The goal of the river is the sea—that out of which the river comes and that to which the river goes is the sea. All the waters of all the lands comes from the sea, and all the waters of all the lands go to the sea. The source and goal of the river are the same.[11]

Thurman concludes "*Life* is like that. The goal of life is God. That out of which life comes and that

8 *Id.*
9 Howard Thurman, Paper 7, *Religious Ideas in Negro Spirituals*, Sch. of Divinity Fac. Publ'n 515, 524 (1939).
10 *Id.* at 66.
11 *Id.*

into which life goes is God. We do not wonder, then, that Augustine says, 'Thou has made us for Thyself, and our souls are restless till they find their rest in Thee.'"[12]

The analogy is complete in the last analysis because the river has a goal; the goal of the river is the sea. Thurman suggests,

> All the waters of all the earth come from the sea. Paradox of paradoxes: that out of which the river comes is that into which the river goes. The goal and the source of the river are the same! From gurgling spring to giant waterfall; from morning dew to torrential down-pour; from simple creeks to mighty rivers—the source and the goal are the same: the sea.

This powerful statement reinforces and affirms Thurman's argument that the source and goal of life is *God*. He posits that all of humanity is created by God and in God's image (*imago Dei*), strengthened, fortified, and enabled by God throughout our lives—and, that ultimately, we return to God. Even for those who do not believe or acknowledge God as creator, Thurman invites an imaginative reading of a lineage and a kinship that goes beyond that of biological parentage. The source of life is God and through death one returns to God to experience eternal life. This analogy, likening life to the flow of the river, is greater than race, ethnicity, gender, sexual orientation, ageism, classism, or social status. One might think of water for bathing, cleansing, "the elixir of life," as well as an element of good or bad realities. And, all of these examples seem to illustrate Thurman's understanding of humanity's own interconnectedness and relationality, akin to the interconnectedness of all of earth's waters through their various channels and canals.

In chapter 8 of his autobiography *With Head and Heart* titled "Mind-Grazing," Thurman writes: "The periods of greatest personal renewal in my life have been spent on the ocean. I love the sea and know it to be the womb from which all living things have come." He concludes:

> There is something ominous about the phrase "the waters covered the face of the earth". Crossing the Atlantic for the first time was like a homecoming of the spirit. There were times when standing alone on deck, the boundaries of the self-dimmed and almost disappeared, and then again affirmed themselves. I felt that I was outside of time, yet watching myself in time.
>
> All life seems to come to attention when the waters are troubled, when the winds rage, and the ship is a thorn in the exposed flank of the water.[13]

Walter E. Fluker's summary of Thurman's reflection is most succinctly stated: "For Howard Thurman, the following is true: (1) the river is the way to freedom ("Deep River, my home is over Jordan…") because life is like the river—simple beginnings with a swell of complexity over time and then it empties itself into the sea "whose far off call the river hears"; (2) there is an *intimate relationship* between the river and its banks—the banks have no choice that the river leaves its deposits and hence we can know the nature of the river by analyzing its sediment that is left, hence "the story of the river is the story of the banks that are touched by it"; and, (3) the flood time of the river brings with it the unexpected, the tragic, "that which has no rational resting place so that as the mind contemplates the experience finds itself tilted and awry . . . and the answer to the flood time of the river is the larger opening of the sea."[14]

On many occasions in worship and public performances, Thurman interspersed the singing of the Spiritual "Deep River" by the audience as a hymn or an arrangement by the choir as an

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12 *Id.*

13 THURMAN, *supra* note 6, at 249.

14 Howard Thurman, Chapel Address at Louisville Presbyterian Seminary: Deep River (November 11, 1967). Walter E. Fluker is currently Dean's Professor of Spirituality, Ethics, and Leadership at Emory University's Candler School of Theology in Atlanta, GA. He is Professor Emeritus and the former Martin Luther King, Jr. Professor of Ethical Leadership, the editor of the Howard Thurman Papers Project and the Director of the Martin Luther King, Jr. Initiative for the Development of Ethical Leadership at Boston University School of Theology.

anthem. The most popular and beloved of all of the arrangements was by Harry T. Burleigh, the pioneer of the arranged-concert Spiritual. Before or after the singing of the Spiritual, Thurman would then begin his reflection from his book in sermon form. This engagement of hearing the music and spoken word paired together provided his audiences and congregations with an experiential, reflective, and insightful experience. Thurman knew that this method of engagement with music, alongside his own art used throughout his collection, rendered his reflections more meaningful, vivid, applicable, and contemplative. As one sang the Spiritual, they fostered a deeper understanding and interpretation of the texts toward more than a song of mere other worldliness. Thurman's reflections expanded the mind and imagination in a way that simply performing the Spiritual or looking at the picture of a river would never accomplish. It is this profound meaning in the hymn, "Deep River," that gives to it first place among all the spirituals.

Pursuing Truth in an Age of Fake News, Misinformation, and Conspiracy Theories

*by Jason Thacker**

Introduction

In recent years, fake news, misinformation, and conspiracy theories have become part of our social fabric, especially in the West. Nearly every day, we see this language lobbed against one's political or ideological opponents on social media and even network news outlets — often without any real accounting of the truth value behind the information presented. Echoing this trend, Washington Post columnist and EPPC scholar Henry Olsen laments that "Misinformation is often in the eye of the beholder, especially when it comes to political speech."[1] While Olsen is focused on how the label misinformation is often applied with political and ideological bias, this seeming lack of concern for truth is widespread among many segments of our society as the battle lines are often drawn against cultural opponents. Because of how these issues often center on politics, religion, and other highly contentious social issues, the prevalence of misinformation and fake news has been often overlooked by many Christian philosophers and ethicists. Often the connections between the epistemological conditions that have given way to these deleterious derivations of reality and what this all means for our increasingly digital society moving forward are overshadowed in light of other pressing issues.

In our technological age, the very nature of truth has become a weapon for many in society as terms like fake news, misinformation, and conspiracy theories are routinely applied to information or news that one simply does not agree with or may prefer not to be true if they go against one's ideological objectives. In an environment driven by efficiency and the widespread digital connectivity, truth is often traded for power, self-aggrandizement, and control of others.[2] As long as the correct political outcome is achieved, does it matter if the truth is altered or fabricated in service of a higher good? If truth impedes some idea of social progress, does it really matter to rearrange the facts in order to do the "right thing"? Is appealing to one's innate sense of doubt or skepticism morally permissible if it "serves" society at large? Or, as some post-foundationalists have recently claimed, should social concern focus more on politics and popular rule rather than a concern for truth?[3]

Behind many if not all tensions and factions in society today is a "clash of orthodoxies" — to use a phrase from law professor Rob-

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* Chair of Research in Technology Ethics, The Ethics and Religious Liberty Commission. Jason is featured on Episode #128 of the *Cross & Gavel* podcast. See inside back cover for QR Code.

1 Henry Olsen, *The Critics Are Wrong. Florida's Social Media Law Is a Necessary Protection of Political Speech*, Wash. Post (May 25, 2021), https://www.washingtonpost.com/opinions/2021/05/25/critics-are-wrong-floridas-social-media-law-is-necessary-protection-political-speech/.

2 French theologian and sociologist Jacques Ellul speaks of this pursuit of efficiency over truth by saying, the "technical means gradually came to dominate the search for truth" as our society sought efficiency over reality and adopted technologies without adequate scrutiny. Jacques Ellul, Presence in the Modern World 41 (Lisa Richmond trans., 2016).

3 Farkas and Schou state in their book, *Post-Truth, Fake News, and Democracy*, that applying post-foundationalism to the current political debates over misinformation and conspiracy theories can yield a more political and less truth oriented public square. They argue "that a way of saving democracy and the democratic tradition might be to create, nurture, and assemble genuine spaces for the enactment of politics proper. Democracy does not need more truth but more politics and popular rule." Their proposal seems to indicate that society should not focus on facts as much but rely on majoritarian rule, which has been shown to exacerbate these political tensions and the breakdown of society under secularism in the first place. *See* Johan Farkas & Jannick Schou, Post-Truth, Fake News and Democracy: Mapping the Politics of Falsehood 154 (2019).

ert P. George — where the very foundation of truth is being debated and battle lines have been formed over what can be known, what is actually known, and how to navigate these warring understandings of truth.[4] Contra much of popular discourse of the day, conspiracy theories and misinformation are not new phenomena, nor do they present existential challenges to the Christian pursuit of truth even if some who claim the name of Christ routinely call the very nature of truth into question as they promote these derivations of truth for social or political gain.[5] In order to combat misinformation in the church and throughout society today, Christians first need to examine the epistemological environment that ultimately gave way to an unhinged skepticism, as well as the contemporary technological conditions that helped it thrive. From that foundation, it will be shown that a Christian theory of knowledge is best suited for the epistemological crisis the Church and society face today as it promotes an understanding of reality in line with God's creation, human depravity, and the ways he created this world to reflect his glory. Finally, from this understanding, Christians can cultivate an epistemic humility as one way to combat the prevalence of misinformation and conspiratorial thinking in our digital age. While humanity is depraved and finite, truth is not only knowable, but it also accords with godliness. While it may not always coincide with the political talking points of the day or the latest social play to wield control over our neighbors, truth is rooted in the very nature and character of God himself.

The Tale of Two Frenchmen[6]

As theories of truth abound in our pluralistic and increasingly secular society, it is increasingly clear that there are deep tensions and competing narratives on how we arrived at this post-truth understanding of reality in society today. The nature of these narratives in turn affects how we seek to move forward in this age of fake news and conspiracy theories. But to navigate these tensions, one must first acknowledge the problem. Former President of the United States Barack Obama said in an interview with *The Atlantic* in 2020, "If [society] does not have the capacity to distinguish what's true from what's false, then by definition the marketplace of ideas doesn't work. And by definition our democracy doesn't work. We are entering into an epistemological crisis."[7] President Obama is obviously correct in his analysis of the sustainability of a post-truth society. But throughout the interview, he falls prey to the very same temptation often seen on the political right, namely, to lay the blame for the breakdown of truth on the opposing political party or even on secular views of reality, rather than examining the source and ubiquity of misinformation throughout the entire social environment.[8] This epistemic arrogance fails to acknowledge the limits of what we do know — especially in the moment with the immediacy of social media — and the fallibility of many prevailing theories of truth today.

So how did we get here and where are we headed as a society? There have been countless competing epistemological narratives proposed over time ranging from the more contemporary

4 Robert P. George, The Clash of Orthodoxies: Law, Religion, and Morality in Crisis (2001).

5 Rabbi Lord Jonathan Sacks explains, "So, though alternative facts, fake news, and post-truth are not new, what has changed is the speed and scope with which they are communicated, via the internet, YouTube, and social media." Jonathan Sacks, Morality: Restoring the Common Good in Divided Times 164 (2020); *see generally* Jonathan Rauch, The Constitution of Knowledge: A Defense of Truth 136-138 (2021) (helpful overview of fake news in pre-digital times).

6 I am indebted to Dr. Bradley Green of Union University for this phrase and the framing of this section.

7 Jeffrey Goldberg, *Why Obama Fears for Our Democracy*, The Atlantic (November 16, 2020), https://www.theatlantic.com/ideas/archive/2020/11/why-obama-fears-for-our-democracy/617087/.

8 This proclivity toward scapegoating one side for the rise of fake news and post-truth realities is widespread with many books on the topic explicitly framed on partisan grounds. *See, e.g.*, Lee C. McIntyre, Post-Truth (2018). McIntyre writes "In my analysis I will therefore strive to be honest, but I cannot promise to be balanced. When the mistakes fall disproportionately on one side, it is not respect for the notion of truth to pretend that everything is even." *Id.* at xiv.

9 Bradley G. Green, The Gospel and the Mind: Recovering and Shaping the Intellectual Life 56-57 (2010).

proposals of Charles Taylor's secularization thesis in *A Secular Age* and Jacques Ellul's theory of technique in *The Technological Society,* to the historical accounts of René Descartes and Blaise Pascal in their respective works. While each narrative is compelling, and there is much to gain from each, a single, cohesive narrative is often hard to distinguish which must lead one to pursue a level of epistemic humility, recognizing the confluence of factors that brought us to this place and time. By examining the works of René Descartes and Blaise Pascal in the development of contemporary epistemology and the role of epistemological skepticism, one will not only see the complexity of the situation at hand, but also some of the possible paths forward — which is especially important for Christians who are called to conform our lives and follow "the Way, the Truth, and the Life" (John 14:6).

René Descartes

Known as the father of modern philosophy and one of the major figures in the rise of radical skepticism, René Descartes (1596-1650) helped to usher in a new world order that revolutionized the West's understanding of truth itself. Philosopher and biblical scholar Bradley G. Green highlights that one of the predominant epistemological narratives begins with the religious wars of the 1600s, where a need arose for certainty amongst competing moral and epistemological ideals. He goes on to illustrate that in light of these circumstances Descartes set out to navigate the tensions and division by seeking "absolute certainty" for his intellectual program that was not directly tied to any religious foundation. Green states that the essence of this Cartesian shift was toward a "solitary, autonomous, reasoning man at the center." Given the enormity of this shift and how it revolutionized philosophy, Descartes became one of the founders of modern thought and forerunner to the Enlightenment thinking of Hume and Kant that brought about massive social and political changes.[9]

Primarily through his *Meditations on First Philosophy* written during the period of 1638-1640, Descartes argued for a methodological skepticism with the goal of securing "foundations of knowledge by employing a 'method of doubt' — that is, doubting as many of his beliefs as he possibly could."[10] Descartes writes,

> So, for the purpose of rejecting all my opinions, it will be enough if I find in each of them at least some reason for doubt. And to do this I will not need to run through them all individually, which would be an endless task. Once the foundations of a building are undermined, anything built on them collapses of its own accord; so I will go straight for the basic principles on which all my former beliefs rested. Whatever I have up till now accepted as most true I have acquired either from the senses or through the senses. But from time to time I have found that the senses deceive, and it is prudent never to trust completely those who have deceived us even once.[11]

Descartes illustrates that he need not question or doubt each of his beliefs individually but can undermine the very foundation of belief by employing a radical skepticism even if his ultimate goal is to discover a solid foundation for knowledge. Philosopher Duncan Pritchard describes Descartes' skepticism as an external world skepticism, given how Descartes sought to doubt the things he knew about the world around him rather than himself.[12] For Descartes, the material world was "inert, inanimate, lacking mental or experiential qualities, and devoid of inherent purpose," where humanity could assert itself as the center of everything.[13]

While Descartes embraced various methods of doubt, he went about a "decidedly *an-*

10 Duncan Pritchard, Scepticism: A Very Short Introduction 25 (2019).

11 René Descartes, 2 The Philosophical Writings of Descartes 12 (John Cottingham et al. trans., 1984).

12 Pritchard, *supra* note 10, at 24-29.

13 James Davison Hunter & Paul Nedelisky, Science and the Good: The Tragic Quest for the Foundations of Morality 35 (2018).

ti-sceptical project, even though it employs sceptical arguments along the way."[14] Philosophers Jamie K. Dew and Mark W. Foreman argue that while René Descartes was not ultimately a skeptic himself, he did employ "systematic doubt about all beliefs to identify those ideas which were undoubtable."[15] They state that "by doing so, he quickly found that there was at least one thing that was clear, distinct, and indubitable: his own existence."[16] This conclusion led to his infamous phrase *cogito ergo sum*, which is usually translated as "I think therefore I am" or "I am, I exist."[17] Commenting on this epistemological shift and use of skepticism, philosopher W. Jay Wood points out that "There is, of course, something ironic about embarking on an intellectual endeavor that begins by devesting oneself of all one's former beliefs (as if this were possible), not to mention the very beliefs that lead to the conclusion that such a project should be undertaken in the first place."[18] While Descartes may believe he is devesting himself of all prior knowledge, he is actually operating out of that very knowledge in his use of skepticism.

While his stated intention was to identify a set of foundational beliefs on which to build his knowledge of himself and the world around him, this epistemological splintering opened philosophical inquiry up to a pervasive radical skepticism that has plagued philosophical thought ever since.[19] Descartes summed up his approach by stating that "Although the usefulness of such extensive doubt is not apparent at first sight, its greatest benefit lies in freeing us from all our preconceived opinions, and providing the easiest route by which the mind may be led away from the senses."[20] He writes that the eventual result of this doubt is to actually make it impossible to have any further doubts about what we know to be true. Whereas this Cartesian skepticism proves deleterious to the contemporary epistemological task, it must be noted that Descartes' overall work brought about many benefits to society. As scholar Craig M. Gay states, "[Descartes'] new conceptualization of nature would prove foundational to the development of the modern scientific method, a method that has permitted us to achieve a great deal of power over nature," extending to business administration, military, politics, medicine, education, and even digital technology itself.[21] This is one reason why careful thinkers must not give into the temptation to simply write off all of Descartes' contributions to contemporary society, even though his introduction of radical skepticism brought about deleterious shifts in epistemology and helped give rise to many of the widespread issues with truth that society still faces in the digital age.

The continuation of Descartes' radical skepticism has now become as natural as food or air in our lives, which creates fertile ground for the possibility of error that is seized upon by some today who promote misinformation and conspiracy theories which thrive on sewing doubt and confusion over the nature of reality.[22]

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14 Pritchard, *supra* note 10, at 25.

15 James K. Dew & Mark W. Foreman, How Do We Know? An Introduction to Epistemology 151 (2014).

16 *Id.* at 152.

17 Descartes, *supra* note 11, at 17. These translations aren't without controversy though. *See* Pritchard, *supra* note 10, at 25. Philosophers have debated the translation which could render the phrase in a very different light and substantially alter the meaning. *See generally* Murray Miles, *The Three Faces of the Cogito: Descartes (and Aristotle) on Knowledge of First Principles*, 68 Roczniki Filozoficzne 63, 63-86 (June 30, 2020) (discussing the controversy and ways to interpret this phrase).

18 W. Jay Wood, Epistemology: Becoming Intellectually Virtuous 95 (1998).

19 It should be noted that while Descartes' radical skepticism represented a major shift in Western philosophical thought, he was not the first to promote versions of these ideas. Other major figures include Pyrrho of Ellis (360-270 B.C), Sextus Empiricus (A.D. 160-210), David Hume (1711-1776), and Immanuel Kant (1724-1804). *See generally* The Cambridge Dictionary of Philosophy 988-91(3rd ed. 2015) (short overview of skepticism—including major figures).

20 Descartes, *supra* note 11, at 9.

21 Craig M. Gay, Modern Technology and the Human Future: A Christian Appraisal 103 (2018).

22 Jacques Ellul rightly points out that one of the great strengths of propaganda is that it can "become as natural as air or food" in society where "the individual is able to declare in all honesty that no such thing as propaganda exists." But this is true only because humanity has become "so absorbed by [technique/technology] that he is literally no longer able see the truth." Jacques Ellul, The Technological Society 366 (John Wilkinson trans., 1964).

This brand of skepticism ultimately undermines the very epistemological foundationalism that Descartes put forth, and the trustworthiness of other methods of knowing truth as well. As Rabbi Sacks aptly notes, "When people gave up their faith in religion, it would not be religion alone that they would lose. They would lose morality, and with it a concern for truth, and then even science would lose its authority."[23] As truth is routinely called into question and radical doubt overshadows all inquiry into knowledge, our "communication [with one another] is thwarted, and the possibility of rational discourse disappears."[24] Similar to a Jenga set, once the foundation or structure of truth and knowledge is weakened it soon becomes unstable and the entire project will come crashing down, especially with the development of digital tools that allow for the instantaneous sharing of information, as well as misinformation, which society has become so accustomed to today. Cartesian skepticism unfortunately helped to usher in the widespread skepticism that we see running wild in our technological society, especially with the ease of presenting "alternative facts" and stirring doubt through social media and other mass communications tools.

Blaise Pascal

French philosopher and mathematician, Blaise Pascal (1623-1662) took a dramatically different approach to the epistemic challenges of his day and ultimately serves as a better philosophical model for the Christian Church in the digital age, despite some challenges. Pascal's primary philosophical contributions are found in his *Pensées*, which were an intended apology for Christianity, but were unfortunately left incomplete and fragmentary at his death.[25] Similar to that of Descartes, Pascal raised deeply skeptical arguments in his work that have become mainstays in philosophical thought ever since, but he did so with a different emphasis and *telos* in sight. While these arguments were originally raised to deny the possibility of knowledge, Pascal sought to utilize them for positive ends anchored in a transcendent reality, rather than landing on a form of personal autonomy, which ultimately opens the door to various forms of relativism.[26] As noted earlier, Descartes' skepticism is rooted in pursuing truth without any *a priori* commitments to God and prior knowledge. Juxtaposed to this type of unhinged skepticism that corresponds to the rise of relativism, Pascal employed similar arguments to reveal the extent of human depravity and to bolster belief in God through the person and work of Jesus Christ as revealed in Scripture.[27]

Pascal sought to use his skeptical arguments in order to highlight a certain paradox in human nature — namely that while we possess knowledge as human beings, true knowledge of God and reality cannot be "rationally justified and that rational arguments cannot even be directed against it."[28] Pascal explains that this paradox can only be explained through the Christian doctrine of the Fall, which did not simply affect our will or desires, but also our rational capacities.[29] He highlights humanity's fallenness by stating that, "Because of man's corrupt nature, [he] does not act according to the reason that

23 Sacks, *supra* note 5, at 167.

24 D. Stephen Long, Truth Telling in a Post-Truth World 8 (2019).

25 *See generally* Cambridge Dictionary, *supra* note 19, at 761-762 (short overview of Pascal and his philosophical contributions).

26 *Id.* at 761; *see also* Ronald H. Nash, Life's Ultimate Questions: An Introduction to Philosophy 230 (2013) (more on epistemological relativism).

27 For more on Pascal's theological beliefs including his connections to Jansenism — which was condemned as a heresy by the Roman Catholic Church because of its emphasis on human depravity and God's unmerited grace, see Desmond Clarke, *Blaise Pascal, in* The Stanford Encyclopedia of Philosophy (Edward N. Zalta ed., 2015), *available at* https://plato.stanford.edu/entries/pascal/.

28 Cambridge Dictionary, *supra* note 19, at 762.

29 Blaise Pascal, The Mind on Fire: A Faith for the Skeptical and Indifferent 92, 148-149 (James M. Houston ed., 2003). This line of argument is similar to Reformed epistemologists like Cornelius Van Til and Alvin Plantinga, which will be examined in detail later. Friedrich Nietzsche summarized Pascal by saying "Our inability to know the truth is a consequence of our corruption, our moral decay." *See* Green, *supra* note 9, at 170 (quoting Nietzsche).

constitutes his being."[30] He goes on to note — in light of our fallenness and the fact that our senses can deceive us — that the "greatness of wisdom . . . is nothing if it does not come from God, [it] is invisible to carnal and intellectual people."[31] Thus, "apart from Jesus Christ we cannot know the meaning of our life or death, of God or ourselves . . . without Scripture, we know nothing, and can see nothing but obscurity and confusion in the nature of God and in nature itself."[32] Pascal reminded his readers that the Christian faith taught humanity two key truths that must be kept together: first, that God is knowable and that humanity has a corrupt nature — making us unworthy of him. He continues by warning that "knowing only one of these aspects leads either to the arrogance of the philosophers, who have known God but not their sinfulness, or to the despair of the atheists, who know their own wretched states without knowing their Redeemer."[33] To deny one and not the other leads to a faulty understanding of knowledge and truth.

Through his skeptical framework, Pascal also critiqued the possibility of proving God's existence on philosophical grounds alone. He saw demonstrative proofs of God's existence furnishing "no knowledge incompatible with unbelief" and these proofs being ultimately incompatible with the epistemological claims of Christianity, which "make God's personal agency essential to religious knowledge."[34] Pascal notes,

> the metaphysical proofs for the existence of God are so remote from human reasoning and so complicated that they make a general impression on people, and even if they did help, it would only be for that moment during which they observed the demonstration. An hour later they would be afraid they had made a mistake. . . . That is the result of knowing God without Christ. . . . Those who have known God through a mediator know their own wretchedness.[35]

While Pascal might overstate the critique of metaphysical proofs or arguments for the cogency of God's existence, his main task was to show that the reality of human depravity is central to the epistemological task since it helps not only ground the limits and fallibility of our knowledge, but also our need for a transcendent redeemer.[36] Pascal's framework can aid society today in navigating much of the tensions of modernity and post-modernity by reminding us that "Everything that is incomprehensible does not, however, cease to exist," meaning that simply because one might not be able to explain something on purely philosophical or even scientific grounds, that doesn't mean it doesn't exist.[37] Pascal models that while we may employ a localized skepticism in order to validate our beliefs and ground our pursuit of reality, we must not let skepticism run free without clear boundaries as it will tend to upend the entire epistemological task under the guise of unhinged doubt and possibility.[38]

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30 Pascal, *supra* note 29, at 230.

31 *Id.* at 203.

32 *Id.* at 153.

33 *Id.* at 148-149.

34 Cambridge Dictionary, *supra* note 19, at 762.

35 Pascal, *supra* note 29, at 150-51.

36 One of the ways that Pascal sought to go about the task of apologetics was through a three-fold strategy of showing that Christianity was respectable, desirable, and then finally true. *See generally* Gavin Ortlund, Why God Makes Sense in a World That Doesn't: The Beauty of Christian Theism 3-9 (2021) (an extended discussion of this strategy).

37 Pascal, *supra* note 29, at 164. This point also coincides with some of the critiques of foundationalism and empiricism as well that seek to deny that which is unprovable. Theologian John Frame writes that one of the presupposed and untestable epistemological obligations is morality and our ethical obligations. *See* John M. Frame, We Are All Philosophers: A Christian Introduction to Seven Fundamental Questions 42-43 (2019). This claim is also in line with failed quest for a scientific foundation for morality. *See* Hunter & Nedelisky, *supra* note 13, at 116.

38 In their helpful introduction to skepticism, Dew and Gould note that there are three primary views of skepticism: global, localized, and methodological. While global skepticism is not addressed in this paper and often associated with the Pyrrhonian skeptics, localized was employed by Pascal and methodological by Descartes. *See generally* James K. Dew & Paul M. Gould, Philosophy: A Christian Introduction 41-42 (2019).

Skepticism Run Amok

As Green states, "the history of modern thought, on the whole, is a history of skepticism, misplaced optimism, and intellectual dead ends," meaning that skepticism plays a major role in how society functions today and thus must be taken seriously, especially in the digital age.[39] As illustrated with the Cartesian method, the goal of modern skepticism is to raise doubts about what can actually be known and to seek to question certain existential beliefs in the pursuit of some foundation of knowledge often rooted in autonomy of the individual. Skepticism can also be taken to the extreme where the very knowability of truth or reality is questioned, which leads to a dire situation in society that operates based on a certain knowability and understanding of truth.[40] Pritchard explains that "while knowledge demands truth, it doesn't demand infallibility or certainty. This means that the sceptics who seek to deprive us of knowledge need to do much more than show that our beliefs are acquired in fallible ways, or that we often are not completely certain of what we believe."[41] Dew and Foreman point out that "skepticism implies that knowledge requires absolute certainty . . . however, this expectation sets the bar too high and is unrealistic."[42] Pritchard highlights an important distinction between these two Frenchman's use of skepticism by stating that while its limited application can be useful in certain domains, radical skepticism "holds that it is impossible to know anything at all about the world around you, or at least anything of consequence," where the guard rails come off and skepticism destroys humanity's ability to communicate and work together toward common goals.[43]

As the divergent paths of Descartes and Pascal illustrate, the very nature of truth is now routinely called into question throughout our society as it is untethered from a transcendent reality or basis for truth. Once this bifurcation in the pursuit of truth occurs under the guise of skepticism, it is unfortunately not very easy to put back in the box. While there are obvious connections with the rise of modernity, one must not think that skepticism is directly correlated with the rise of conspiracy theories, but that the Cartesian path described created the conditions for skepticism to run wild throughout modern society. As Pritchard states, "there can be all kinds of good reasons why it might be right to be sceptical about particular [truth] claims," like a *localized* doubt grounded on what we do know to be true.[44] But, we must be cautious "when we become sceptical of scientific claims *en masse*" because this type of skepticism makes it difficult to "make sense of how our scepticism is grounded in what we know at all."[45] Thus, Christians must navigate the waters of skepticism with great wisdom and care.

Similarly Dew and Foreman note, "the more radical versions of skepticism are a dead-end street and seem to be intellectually implausible," but that there are some "common sense" skeptical behaviors that humanity uses on a daily basis such as cultivating an epistemic humility and acknowledging that we all tend to make bold assertation about issues for which we have little actual knowledge or evidence.[46] They continue by stating though that "skeptics [can] raise good philosophical points for us and remind us that we can make errors in our thinking. But suggesting that we cannot trust our senses is both dangerous and foolish."[47] This reminder of human fallibility is central to how Pascal sought

39 Green, *supra* note 9, at 58.

40 Pritchard, *supra* note 10, at 1.

41 *Id.* at 15.

42 Dew & Foreman, *supra* note 15, at 158-59.

43 Duncan Pritchard, What Is This Thing Called Knowledge? 201 (4th ed. 2018).

44 Pritchard, *supra* note 10, at 3.

45 *Id.*

46 Dew & Foreman, *supra* note 15, at 156-57.

47 *Id.* at 158.

to employ skepticism under a transcendent framework of God as creator and humanity as his creatures. Pritchard correctly notes that "we are now in the age of so-called post-fact politics, where those in charge of the political spin will flatly deny what is patently the case and argues that they are simply presenting 'alternative facts.'"[48] Thus, society must have some level of skepticism about the constant onslaught of information we face each day. As author Alan Jacobs has noted, "Navigating daily life in the Internet age is a lot like doing battlefield triage," and this is especially true in a post-truth world.[49] Biblical scholar and epistemologist Dru Johnson states that this information overload has led to a "supermodernism," which is "signaled by folks who give up on questions about what is true and who has the right to tell the correct master narrative. Because of the proliferation of data and sources, supermoderns only worry about who they can trust to guide them through the daily morass of information."[50] With the deluge of information today, how is the Church to navigate this battlefield of ideas?

In a world of pervasive sinfulness and with the widespread use of technological means of communication, Christians can and should acknowledge that sometimes information deemed misinformation or conspiracy theories proves to be true and that some will seek to use these labels to distort reality for political or social gain, just as others distort truth itself for similar ends. With the ubiquity of social media, a single individual without any real authority or knowledge can falsely claim something is fake news or share a conspiracy theory widely without any real recourse or accountability. What once was the exclusive domain of government and various institutions in society with access to technological tools — like that of the radio, press, and motion pictures — is now available to anyone with a smartphone and rhetorical savviness.[51]

The rise of radical skepticism paired with the bifurcation of truth and morality sets the perfect conditions for our contemporary post-truth society, where gut feelings and personal desires override a sense of reality and truth since they have been cut off from their transcendent roots.[52] This epistemological phenomenon, combined with the rise of disruptive technologies such as television, internet, and social media, function as a perfect recipe for the current climate of dis/misinformation, conspiracy theories, and propaganda in society. Pritchard highlights how contemporary epistemological skepticism has given way to the rise of "false facts," "post-truth politics," and even conspiracy theories themselves by "effectively [licensing] such phenomena, since once everything is open to doubt, then there is nothing that is accepted as true, and hence what's true starts to drop out of the equation all together."[53] He also argues that this type of radical skepticism naturally leads to an environment of relativism, where "truth is just simply whatever someone says it is."[54] He goes on to state that "Fake news is a reality, and it's transforming the political landscape," but it goes further than just the political as it extends to the social and religious landscapes as well.[55] Given the enormity of the issues of misinforma-

48 Pritchard, *supra* note 43, at 185.

49 Alan Jacobs, *No Time But the Present*, Harper's Mag. (September 10, 2020), https://harpers.org/archive/2020/10/no-time-but-the-present-breaking-bread-with-the-dead-alan-jacobs/.

50 Dru Johnson, *Jesus Cares About Your Conspiracy Theory*, Christianity Today (November 22, 2019), https://www.christianitytoday.com/ct/2019/december/jesus-cares-about-your-conspiracy-theory.html.

51 For Ellul, modern propaganda was the convergence of two different techniques, namely a complex of *mechanical techniques* like radio, press, and motion pictures—which today would also include television and social media—that allows for large scale communication to the masses, while simultaneously addressing each individual in a group as well as *psychological technique*, which give access to the knowledge of the human psyche, allowing a propagandist to shape the nature of truth, how one views the world, and play on society's inherent skepticism. Ellul, *supra* note 22, at 363-64.

52 While communications scholars Johan Farkas and Jannick Schou hold to a more post-foundational approach to truth in our digital society, they rightly point out that "reason has been superseded by alternative facts and individual gut feelings," which in turn leads some to claim that the very fabric of democracy is rupturing. Farkas & Shou, *supra* note 3, at 2.

53 Pritchard, *supra* note 10, at 4-5.

54 *Id.*

55 Pritchard, *supra* note 43, at 186.

tion, fake news, and conspiracy theories before society, how is the Church to respond in a post-truth world where skepticism has run amok without the transcendent guardrails of reality?

Recovering a Biblical Epistemology for the Digital Age

In order to navigate the pressing epistemological issues of the day, Christians need to recover a robust account of how we know what we know and the foundation upon which our knowledge of God and the universe is built. Renowned theologian and ethicist John Murray reminds the Church of the centrality of truth by saying, "No claim is more basic or ultimate than that of truth. We cannot regard any other sanction as higher on the altar of which truth may be sacrificed."[56] So what constitutes a robust biblical epistemology for the Church today? Dew and Foreman note that "skepticism raises important questions about our cognitive and perceptual limitations but goes too far and leaves us with nothing, or almost nothing, that can be known," which is contrary to a rich biblical epistemology rooted in revelation and the *sensus divinitatis*.[57] While many versions of a biblical epistemology exist, a Reformed account can help ground the Church in a world that rejects an ultimate reality outside of the immanent frame by acknowledging the depths of human depravity and knowledge of God both through general and special revelation.

Cornelius Van Til illustrates a distinctly Reformed Christian theory of knowledge in that it begins with looking at the Scriptures themselves rather than rooting knowledge in some version of the "autonomous man."[58] He notes that, "This God of the Bible is, therefore, the final reference point for predication of his rational creatures."[59] Van Til sees self-autonomy at the root of many Christian and non-Christian theories of knowledge alike, including the primacy of reason in the Roman Catholic view. A major facet of his theory relies on a similar line of thought to his contemporary Alvin Plantinga as both appeal to the *sensus divinitatis*, or sense of the divine.[60] As the Apostle Paul writes about in Romans 1, this sense of the divine exists in all people; and, while it may be suppressed in our sinfulness, being created in God's image means that the "natural man has the power to observe the facts of the physical universe, to weigh them and arrange them," according to Van Til's interpretation of the Dutch theologian Abraham Kuyper.[61] Van Til's theory is distinct from a Roman Catholic view of natural law though, since it doesn't rest on the ability of humans to reason to God. He argues that the Christian faith is not an irrational faith, but that the focus must be on God's action to *save* rather than our ability to *reason*. For Van Til, this is a rejection of human autonomy and an embracing of total dependence on God. He notes that while we may have some knowledge of God and the world around us through our rationale capacities, those capacities are nevertheless affected by the Fall and are ultimately unreliable given our finiteness. He emphasizes the role of total depravity in epistemology by stating that the "Reformed Christian replies that though he is dead in sins, this deadness of the natural man is an *ethical* deadness, not a metaphysical escape from God."[62] So, while we do not perceive perfectly, our rational capacities are intact but damaged, which highlights our total dependence on God to save us.

Similar in many respects yet from a different vantage point is philosopher Alvin Plantinga, who lays out his theory of warranted Christian belief through what he describes as the A/C model (or, the Thomas Aquinas and John Calvin model).[63] He argues that both Aquinas and Calvin believed in the natural knowledge of

56 John Murray, Principles of Conduct: Aspects of Biblical Ethics 147 (2003).

57 Dew & Foreman, *supra* note 15, at 162.

58 Cornelius Van Til, A Christian Theory of Knowledge 12-13 (1975).

59 *Id.* at 41.

60 *Id.* at 227.

61 *Id.* at 231.

62 *Id.* at 245.

63 Alvin Plantinga, Warranted Christian Belief 168-70 (2000).

God apart from theistic arguments or various forms of evidence, similar to Pascal. Plantinga describes that this A/C model is built on Calvin's basic claim that there is a sort of natural human tendency to form beliefs about God under a variety of conditions and in a variety of situations.[64] These circumstances trigger a sense of the divine by pointing us to the grandeur of God, especially in the glories of nature, but also to a moral sense given that humanity is a divine image bearer. This moral sense is based on the conception of divine disapproval for doing something wrong or "forgiveness upon confession and repentance."[65] He argues that this capacity for knowledge of God is part of our original cognitive equipment given by God to humanity, but that sin also distorts this divine sense, in agreement with Pascal. This necessitates the work of the Holy Spirit who testifies to the Holy Scripture, as well as the Holy Spirit's own work in response to our sin.[66]

Plantinga speaks to the damage and deformity of this sense by saying that "because of the fall, we no longer know God in the same natural and unproblematic way."[67] Sin produces in us a resistance to the deliverances of the *sensus divinitatis*, yet God has rescued us and made a way back to him. Both Van Til and Plantinga remind the Church that there is a certain type of unity and coherence to the Christian theory of knowledge since it aligns with the realities of God as Creator, humanity as his image bearers, and the world as his creation. Thus, the Reformed tradition sees the centrality of revelation and most importantly the person of Jesus Christ as the focal point of all reality and knowledge. Considering the unity of truth and the extent of human depravity, how then can the Church model these corresponding truths in a digital age littered with fake news, misinformation, and conspiracy theories?

Epistemic Humility in a Post-Truth World

In a world of competing claims to truth and knowledge, how might one seek to navigate this "clash of orthodoxies" that is amplified as never before, with the rise of sophisticated technologies that make sharing fake news and conspiracy theories to the masses easier than ever? Considering the richness of Pascal's use of localized skepticism and the twin truths of God as creator and the depravity of humanity, the Church has the unique opportunity to model an epistemic humility that acknowledges the knowability of truth, but also our inability to discern it perfectly as fallen creatures. Dew and Foreman note that "Skepticism reminds us to be careful about overstating our case for the beliefs we hold."[68] As the Apostle James writes in 3:13-18,

> Who is wise and understanding among you? By his good conduct let him show his works in the meekness of wisdom. But if you have bitter jealousy and selfish ambition in your hearts, do not boast and be false to the truth. This is not the wisdom that comes down from above, but is earthly, unspiritual, demonic. For where jealousy and selfish ambition exist, there will be disorder and every vile practice. But the wisdom from above is first pure, then peaceable, gentle, open to reason, full of mercy and good fruits, impartial and sincere. And a harvest of righteousness is sown in peace by those who make peace.

Christians of all people are to be gentle, open to reason, and full of mercy and grace based on an understanding of God's infinite glory and our deep depravity. The Church's speech must reflect the truth that it proclaims as well, as Murray notes that "the injunctions of Scripture

64 *Id.* at 171.

65 *Id.* at 173-74.

66 *Id.* at 180.

67 *Id.* at 205.

68 Dew & Foreman, *supra* note 15, at 157.

which bear directly on the demand for truthfulness have reference to speech or utterance."[69] The twin truths, heralded by Pascal and others, remind the Church that we must cultivate epistemic humility as we question what we know in light of what God has revealed of himself and the world around us.

Another aspect of epistemic humility that one can gain from a localized skepticism and acknowledgement of human depravity is—as public theologian Richard John Neuhaus wisely articulates—that each of us must resist the temptation to falsely believe that others would simply believe and act as we do if they were only as "mature and enlightened as we are." Neuhaus calls for epistemic humility amid the social and political tensions, one that admits that while truth is knowable and objective, we often fail to grasp reality perfectly and need to be humble enough to admit when we err.[70] Philosopher and Rabbi Lord Jonathan Sacks extends this concept of epistemic humility by stating,

> Where there is honesty — truth and truthfulness — there tends to be law, order, and prosperity. A respect for truth is essential for authority, collaborative endeavor, and human graciousness. But it requires humility. I have to be able to recognize that certain facts are truth even though they challenge my conviction. I have to acknowledge that there is something larger than me.[71]

This call for epistemic humility is counter-cultural in many ways as contemporary society and even the very nature of technology is constantly discipling and shaping each of us to act as if we have a monopoly on truth or that somehow humanity is infallible in our pursuit of knowledge.

This practice can also help society to traverse the rough digital terrain of misinformation as Christians seek to listen and verify before speaking or sharing online (James 1:19). Rabbi Sacks goes on to write, "In a world without truth, fake news and alternative facts flourish because there is nothing else, nothing that stands above the conflicting voices and clashing narratives. Truth was defeated in theory long before it was destroyed by social media."[72] Thus while much of the epistemic crisis that society is facing today is exacerbated by technology and social media, the Church must remember that many of these challenges are not new issues per se, but instead new opportunities for humanity to rebel against our creator and assume that we each live autonomous and free from any type of moral accountability and restraint.[73] But, as Reformed epistemology reminds us, humanity is wholly dependent on God and his provision of grace to overcome our deep depravity and desire to assume a God-like role over truth and knowledge.

Conclusion

As philosopher Duncan Pritchard notes, "the wise person [needs to be] wary of being too reliant on technology and will also want to ensure that some fundamental skills and knowledge are retained in a non-extended fashion."[74] This reminder helps to frame the digital age as one of great convenience, but also one of great peril. Often the Church fails to see or address how technology is shaping and directing us toward its own ends. This failure is altering how we not only view God and ourselves, but even the nature of truth itself. Given the epistemological trajectory of the last 400 years, the Church must recognize the immense power and influence that technology has over us as it is paired with

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69 Murray, *supra* note 56, at 135.

70 Richard John Neuhaus, The Naked Public Square: Religion and Democracy in America 16 (1997).

71 Sacks, *supra* note 5, at 163.

72 *Id.* at 167.

73 O'Connor and Weatherall note that "Of course, lying is hardly new, but the deliberate propagation of false or misleading information have exploded in the past century," which is a good reminder for the Church of the expansive influence of technology that capitalizes on our vices and depravity. Cailin O'Connor & James Owen Weatherall, The Misinformation Age: How False Beliefs Spread 9 (2019).

74 Pritchard, *supra* note 43, at 159.

major philosophical shifts and the mainstreaming of skepticism as seen in the rise of misinformation and conspiratorial thinking. Even in the face of an unhinged skepticism and onslaught of misinformation, the Church can have a steady hope knowing that the "faith that was once for all delivered to the saints" is not only true, but reliable (Jude 1:3). As Pascal illustrates, "It is false piety to preserve peace at the expense of truth. It is also false zeal to preserve truth at the expense of charity."[75] Christians are a people of both truth and grace — both rooted in a philosophical and historical understanding of human depravity and dependence upon God. Truth is not a weapon to be wielded against our perceived enemies, but a gift to be cherished and promoted throughout every aspect of our society, including the Church itself.

75 Pascal, *supra* note 29, at 230.

The Power of Imagination: Sayers and the Seeing of Cinema

*by Crystal Downing**

Introduction

As a bestselling author during the Golden Age of detective fiction, mystery novelist Dorothy L. Sayers (1893-1957) thought deeply about the intersection of imagination and the law. Like Arthur Conan Doyle's Sherlock Holmes and G. K. Chesterton's Father Brown, Sayers' amateur sleuth, Lord Peter Wimsey, solves crimes that baffle Scotland Yard specialists. Two of Sayers' novels, *Clouds of Witness* (1926) and *Strong Poison* (1930), contain courtroom scenes for which Wimsey imagines interpretations of evidence that are more accurate than those of solicitors and barristers. And Sayers titles the second section of *Unnatural Death* (1927), which deals with disputations about a will, "The Legal Problem," quoting Sir Edward Coke for her epigraph: "The gladsome light of jurisprudence." Even her one detective novel out of twelve that does not contain Lord Peter as a character makes reference to law courts. Sayers sets up *The Documents in the Case* (1930) as a collection of materials sent to a Director of Public Prosecutions, so that he can overwhelm "the counsel for the defence [sic]" at a murder trial.[1] All these novels emphasize the importance of seeing details that others miss. Seeing truth, for Sayers, takes imagination.

Sayers developed her sensitivity to imaginative seeing through her skills with a camera, having won a photography contest before she matriculated to Oxford University. And several years after she completed her studies, earning highest honors in her discipline, she went to great trouble and expense to have her portrait done by a photographer whom she considered an artist: someone, she believed, who had a better eye than most professionals. Significantly, the artist Sayers sought out, Dorothy Wilding (1893–1976), later became famous for her portraits of the Royal Family — photographs upon which films and streamed series like *The Crown* base their images of the young Queen Elizabeth.

We should not be surprised, then, that Sayers also enjoyed cinema. While a university student (1912–15), she took advantage of the six cinemas in the town of Oxford, writing home about movies she had screened.[2] After university, she repeatedly went to the movies in consolation for a teaching job she hated. And several years later, while doing office work at a boarding school in France, she tried her hand at screenwriting, having met a film producer during one of her crossings of the English Channel. In fact, Sayers adored writing silent film scenarios, wishing she could make a profession of it. She only began writing detective fiction because she needed a surer source of income, conceptualizing her first novel while still hoping to have a screenplay produced.

Sayers' fascination with imaginative seeing, then, was transposed into her detective fiction. It is no coincidence that, for her very first novel, she gives Lord Peter a man servant named Bunter who is adept at camera work. *Whose Body?* (1923), which launched Sayers' career as a respected mystery author, contains at least fourteen allusions to photography, not only the taking and developing of photographs, but also the specialized equipment necessary for success. In addition, Sayers' succeeding novels are scattered with allusions to cinema: from celebrating Charlie Chaplin to highlighting differences between silent and sound cinema; from famed German

* Co-Director of the Marion E. Wade Center, Co-Holder of the Marion E. Wade Chair in Christian Thought, Wheaton College. Crystal is featured on Episode #112 of the *Cross & Gavel* podcast. See inside back cover for QR Code.

1 Dorothy L. Sayers, *Unnatural Death, in* On the Case with Lord Peter Wimsey: Three Complete Novels 465 (1991); Dorothy L. Sayers, The Documents in the Case 230 (1987).

2 The number of cinemas in Oxford comes from a 1914 report. *See* Colin Harding and Simon Popple, In the Kingdom of Shadows: A Companion to Early Cinema 209 (1996).

Expressionist film *The Cabinet of Doctor Caligari* (1920) to a Mickey Mouse short.

Unfortunately, many Christians do not see as well as Sayers does. When her correspondence was collected into four published volumes, her letters praising cinema were excluded. The editor, born in 1915, clearly did not think cinema worthy of notice, going so far as to only include letters in which Sayers reviles particular films. Indeed, anyone who values cinema as an art form, like Sayers, is going to revile poorly made movies. It is all about seeing images that ignite the imagination—as in good mystery novels.

Seeing the Mystery

For the mystery of *Whose Body?*, composed when Sayers still wanted to write for the screen, an unassuming architect discovers a corpse wearing nothing but pince-nez lenses in his bathtub. Herself sporting pince-nez while working on silent film scenarios and her first novel, Sayers seems to imply that the glasses balanced on the dead man's nose allude to the driving force behind detective fiction: most people, like the man in the bathtub, are dead to clues staring them in the face. It takes viewers with imaginative lenses, like Lord Peter with his monocle, to separate the significant from the incidental.

The same, then, could be said of cinema. Most people go to movies seeing only the narrative incidents portrayed on screen, failing to detect significant details that embody the mystery of cinematic art. Books about Christianity and film all too often follow suit, authors saying little about a movie that could not be gleaned simply by reading its screenplay.[3] When Christian investigators do focus on screen imagery, they often fixate on one particular sign, like a cruciform pose, identifying a Christ-figure with no supporting evidence from the rest of the film. As Robert K. Johnston aptly notes, "There is a danger, as anyone teaching in the field of Christianity and the arts knows, in having overenthusiastic viewers find Christ-figures in and behind every crossbar or mysterious origin."[4] As though aware of this very issue, Sayers, in *Whose Body?,* has Lord Peter comment about authors of Bible commentaries: "'All these men work with a bias in their minds, one way or other'; he said, 'they find what they are looking for.'"[5]

Significantly, Sayers makes this comment relevant to the mystery of the corpse in the bathtub. Because Sir Reuben Levy, a respected Jewish businessman, has recently gone missing, professional detectives jump to the conclusion that the dead man in the bathtub must be Sir Reuben: they find what they are looking for. What they fail to see is a detail noticed by Lord Peter: the corpse is not circumcised and, therefore, is not Jewish. When Sayers' publisher forced her to remove the reference to circumcision, she provided a clue in a different form. Peter makes his comment about the myopia of Bible scholars to Detective Inspector Charles Parker, a friend who is reading "a modern commentary on the Epistle to the Galatians,"[6] an epistle that mentions circumcision thirteen times.

Even Parker, though a thoughtful Christian and well-trained Scotland Yard detective, fails to see all the details. In fact, Sayers describes him as "a faithful though doubting Thomas," leading one editor to add a footnote explaining that doubting Thomas is "a skeptic who refuses to believe what he *sees*."[7] Most significant of all, Sayers later attributes Parker's weakness to a lack of imagination. In her second novel, *Clouds of Witness*, she explicitly states of Parker, "he was not very imaginative." Hence, when he later talks to a murder witness, readers should pick up on a bit of irony when he says, "You see, I'm a police-officer. I never imagined—." Of course, he is not alone. Lord Peter tells Bunter, his adept photographer, "Well-bred English people never have imagination."[8]

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3 I also explore this problem in *Salvation from Cinema: The Medium is the Message*, where I assess scholarship in the field of "religion and film," providing an historical overview of film theory. Crystal Downing, Salvation from Cinema: The Medium is the Message (2016),

4 Robert K. Johnston, Reel Spirituality: Theology and Film in Dialogue 53 (2000); *see also* Christopher Deacy & Gaye Williams Ortiz, Theology and Film: Challenging the Sacred/Secular Divide 5-6, 27-28 (2008) (offers similar cautions against the "discovery" of Christ-figures in film).

5 Dorothy L. Sayers, The Complete, Annotated *Whose Body?* 136 (Bill Peschel ed., 2011).

6 *Id.*

7 *Id.* at 166 (emphasis mine).

Astutely noticing images through her camera and on cinema screens, Sayers believes imagination enables people to see beyond their own assumptions and prejudices. How, then, might Christians be nurtured toward more imaginative seeing of cinema? Sayers' own faith trajectory might provide insight to what she later called "a Christian Aesthetic."[9]

From *Whose Body?* to Christ's Body

The only daughter of an Anglican rector, Sayers never renounced her faith; she instead marginalized it, weary of the unimaginative pietism and legalism of Christians she encountered. Delighted that her college at Oxford did not require chapel attendance, she got her inspiration from the arts, attending theater, performing in plays, co-founding a writing club, singing in the Bach Choir, as well as screening silent cinema while upgrading her camera equipment. When she began writing detective fiction six years after going down from Oxford, she quite consciously made her protagonist non-religious. Though she gave Wimsey a Christian friend in the early novels, she slowly marginalizes the unimaginative Parker as the novels proceed. By her third novel, *Unnatural Death*, she describes Parker as "windy," often responding to Peter "peevishly" or "bitterly." Parker "was one of those methodical, painstaking people" who took on "tedious and soul-destroying tasks."[10]

Sayers was far more interested in the imaginative friend who would replace Parker in Wimsey's life: Harriet Vane, the daughter of a country doctor and a detective fiction novelist adept at camera work. In the novel that introduces Harriet, *Strong Poison* (1930), Peter first sees Harriet in the courtroom, where she is being tried for murdering her live-in lover, a novelist who "preached doctrines" many consider "immoral or seditious, such as atheism, and anarchy," as well as "free love." The judge at her trial mentions Harriet's "immoral life" before stating that her refusal to marry should not cause jurors to be "prejudiced" against her, thus showing his own prejudices, as journalists in the gallery recognize.[11] Lord Peter, however, imaginatively sees beyond Harriet's questionable life decisions to recognize that she is innocent of murder, and, true to Golden Age detective fiction, he ultimately proves the truth of his vision.

Ironically, Sayers' imaginative vision at the time would have shocked her readers. Tired of Wimsey's histrionic behavior, she invented Harriet in order to have Lord Peter fall in love so she could marry him off and stop writing novels about him. Indeed, in 1930, the same year *Strong Poison* came out, Sayers published her one novel in which Peter does not appear: *The Documents in the Case*. Sayers was ready to move on. However, the process of inventing Harriet Vane piqued her imagination, and Sayers came to value this intelligently creative woman whom a Wimsey friend describes as "not even pretty."[12] Sayers thus surpassed her own imaginings, deciding to write more novels in order to change Peter enough to make him worthy of marriage to Harriet. After turning down Peter for five years, Harriet finally accepts his marriage proposal in *Gaudy Night* (1935), having been convinced that Peter respects her own imaginative work as a female detective novelist.

While Sayers was exploring what she would later call "the integrity of the work" through Harriet Vane,[13] she was asked by a British film company, Phoenix Films, to write a Peter Wimsey short story that could be turned into a screenplay. When she received the shooting script, she was so disgusted by the shoddy workmanship that she tried to have her name removed from the title sequence for *The Silent Passenger* (1935), to no avail. Her outrage helped transform her life.

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8 Dorothy L. Sayers, Clouds of Witness 102, 138, 175 (1995).

9 Dorothy L. Sayers, *Towards a Christian Aesthetic, in* Unpopular Opinions: Twenty-One Essays 29-42 (1946).

10 Sayers, *supra* note 1, at 423, 448, 456, 514.

11 Dorothy L. Sayers, *Strong Poison, in* On the Case with Lord Peter Wimsey: Three Complete Novels 6-7 (1991).

12 *Id.* at 14.

13 Sayers uses the phrase "the integrity of the work" five times in two pages in *The Mind of the Maker.* Dorothy L. Sayers, The Mind of the Maker 223-25 (1987).

The year after the publication of *Gaudy Night* and the premiere of *The Silent Passenger*, Sayers was asked to follow in the footsteps of T. S. Eliot by writing a play about the history of Canterbury Cathedral to be performed inside the cathedral for the yearly Canterbury Festival. In contrast to Eliot, who wrote *Murder in the Cathedral* (1935) about the famous slaying of Archbishop Thomas Becket (c. 1120–1170), Sayers chose to write about the non-Christian William of Sens, a working-class architect who was hired to redesign and rebuild part of the cathedral after it was destroyed by fire in 1174 CE. And her emphasis, as with Harriet Vane, was on the celebration of imaginative craft. In her play, called *The Zeal of Thy House* (1937), Sayers actually has one of the monks in the Cathedral Chapter describe William with these words: "He thinks of nothing, lives for nothing, but the integrity of his work."[14]

Whereas Thomas Becket was elevated into sainthood after falling at the hand of an assassin, William of Sens falls from a scaffold after being elevated to the top of an arch. Though William's accident is historical, Sayers uses the fall to symbolize William's fall into the sin of pride: a temptation for many people in the arts, from cinema to architecture. In William, then, Sayers has come a long way from *Whose Body?,* where a timid little architect finds a dead body in his bathtub and doesn't know what to do about it. The body Sayers starts to consider in this play is the Body of Christ, in whose honor and for whose sake the cathedral was originally built. *The Zeal of Thy House,* in other words, encouraged Sayers to send her imagination in a new direction, forcing her to consider what the integrity of work has to do with Christianity. And what she concluded has powerful consequences for a Christian approach to cinema.

A Trinitarian View of Creativity

In the process of creating *The Zeal of Thy House,* Sayers came to the conclusion that creativity fulfills the *imago Dei*, as recounted in the first chapter of the Bible: "So God created man in his own image, / in the image of God he created him; / male and female he created them" (Gen 1:27, NIV). Because the God described in this chapter is a creator, rather than a lawgiver, judge, or redeemer, the verse implies that we mirror the image of our Creator when we are creative—which takes imagination. As William explains in *Zeal of Thy House*, God "made His masterpiece, / Man, that like God can call beauty from dust, / Order from chaos, and create new worlds / To praise their maker."[15]

Sayers goes one step further by suggesting that the imaginative creativity fulfilling the *imago Dei* endorses Christian doctrine, which establishes that God is a Trinity. She actually puts this insight into the mouth of an Archangel, who closes the play praising God, "the adorable Trinity": "Praise Him that He hath made man in His own image, a maker and craftsman like Himself, a little mirror of His triune majesty. For every work of creation is threefold, an earthly trinity to match the heavenly." And the angel proceeds to explain that creativity, which takes imagination, is comprised of Creative Idea, Creative Energy, and Creative Power, corresponding to Father, Son, and Holy Ghost: "And these three are one, each equally in itself the whole work, whereof none can exist without other; and this is the image of the Trinity."[16]

One clergyman, after reading *The Zeal of Thy House*, was so amazed by Sayers' imaginative conception of a triune *imago Dei* that he encouraged her to write a book about the topic, which resulted in *The Mind of the Maker* (1941), a work that C. S. Lewis praised as "indispensable."[17] On the simplest level, Sayers explains, Idea corresponds to a book as conceptualized, whereas Energy is the book as written. Indeed, many authors talk about "fleshing out" their ideas, recognizing that the two are consubstantial, as are God the Father and God the Son, who became flesh. Arising out of this consubstantiality is Creative Power, first as the writer rereads her creation to revise the work,

14 Dorothy L. Sayers, *The Zeal of Thy House, in* Four Sacred Plays 46 (1948).

15 *Id.* at 68.

16 *Id.* at 103.

17 C. S. Lewis, Miracles: A Preliminary Study 101 (1947).

and next as the book is read by others, where it manifests a "Pentecost of Power," as when the Holy Ghost appeared in tongues of fire after the physical resurrection of God Incarnate (Acts 2).[18] In a chapter entitled "Idea, Energy, Power," Sayers uses the example of a poet: "To write the poem (or, of course, to give it material form in speech or song), is an act of love towards the poet's own *imaginative* act and toward his fellow-beings. It is a social act; but the poet is, first and foremost, his own society."[19]

The same, of course, could be said about the poetry of film, which entails an Idea conceptualized by screenwriter and/or director; Energy as the film is fleshed out by cinematographers and editors; and a Pentecost of Power that affects viewers. The first viewers, of course, are the makers themselves who assess shots and edited footage before the film is released: the three are one in the imaginative process of creation—at least for a well-crafted film. Indeed, Sayers rails against poorly made films, especially by people who believe in the Trinity: "The worst religious films I ever saw were produced by a company which chose its staff exclusively for their piety. Bad photography, bad acting, and bad dialogue produced a result so grotesquely irreverent that the pictures could not have been shown in churches without bringing Christian into contempt."[20]

To grapple with unimaginative work, Sayers parallels poorly-made works of art with heresies that developed during the history of Christianity, heresies that usually reflected an imbalanced view of the Trinity. In *The Mind of the Maker* she outlines what she calls "Scalene Trinities," by which she refers to one of the three components dominating a work of art. A "father-ridden" film is all Idea and no Energy, as seen in propaganda movies—including movies made merely to evangelize others. In contrast are movies that are all Energy with no Idea. Filled with exciting chase scenes, amazing CGI, sumptuous costuming, etc., such "son-ridden" movies offer no insight about human nature or culture. Finally, failure of imagination in a "ghost-ridden" work occurs when a writer "conceives that the emotion which he feels is in itself sufficient to awaken response, without undergoing discipline of a thorough incarnation, and without the coherence that derives from reference to a controlling idea."[21]

A well-crafted film, like a well-crafted cathedral, manifests Idea, Energy, and Power in collaboration. Significantly, filmmakers and theorists often talk about the "architecture" of a film, as when famous Soviet filmmaker Dziga Vertov, a contemporary of Sayers, states, "I am builder," telling his audiences, "I have placed you . . . in an extraordinary room which did not exist until just now when I also created it. In this room there are twelve walls, shot by me in various parts of the world. In bringing together shots of walls and details I've managed to arrange them in an order that is pleasing."[22] His comments parallel the Archangel's final statement in *The Zeal of Thy House*: "Look then upon this Cathedral Church of Christ: imagined by men's minds, built by the labour of men's hands, working with power upon the souls of men: symbol of the everlasting Trinity."[23] Indeed, in *The Mind of the Maker*, Sayers establishes that even people who revile Christianity nevertheless recognize a three-fold process in their artistic work. Their understanding of creativity endorses a Trinitarian *imago Dei* even when they do not.

In sum, as Sayers explains, "material creation expresses the nature of the Divine Imagination."[24] Lovers of cinema should therefore take special note that the first chapter of Genesis describes the results of Divine Imagination with an emphasis on seeing: and God *saw* that it was good; and God *saw* that it was good; and God *saw* that it was good. Honoring the *imago Dei,* let us go and do likewise.

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18 Sayers, *supra* note 13, at 112, 113-15.

19 *Id.* at 42.

20 Dorothy L. Sayers, *Why Work?, in* Creed or Chaos? 80 (1974).

21 Sayers, *supra* note 13, at 151, 154.

22 Quoted in David Bordwell et al, Film Art: An Introduction 225 (12th ed. 2017).

23 Sayers, *supra* note 14, at 103 (emphasis mine).

24 Sayers, *supra* note 13, at 42.

DIALOGUE

The End of Law?

A Conversation with David Opderbeck on Law, Theology, & Neuroscience[*]

Interviewer: Anton Sorkin

Q. Professor Opderbeck, thank you so much for taking part in this conversation about your new book. I want to begin by asking how you got into researching the interaction of neuroscience and law?

A. I had been interested in the relationship between theology and science for quite some time. My mainstream legal scholarship concerns law, science, and technology. As I got deeper into theological studies, I came across this "neurolaw" literature and thought it presented some interesting questions both for theological anthropology and jurisprudence. This prompted me to reach out to the person who would become my Docktorvater, Conor Cunningham, and eventually to begin my Ph.D. studies with him.

Q. Your book is entitled *The End of Law? Law, Theology, and Neuroscience.* In that title, the question mark seems to be doing a lot of the talking. What does the "end" suggest and what is precipitating this potential downfall?

A. The problem the book addresses is reductive neurolaw. "Neurolaw" can mean lots of things relating to neuroscience and the law. Most of the work in this space is good — for example, questions about how a brain scan might be used as evidence in a criminal matter or in a personal injury case. "Reductive" neurolaw, however, argues that neuroscience destroys all the "folk" concepts about human agency that underpin traditional legal concepts. This, I argue, is philosophically incoherent.

"End" in the title has a double meaning. As you note, it asks whether "neurolaw" will be the end of a meaningful concept of the rule of law. But it also means "end" in the sense of *telos* — it's asking about the purpose of the law. In asking about the purpose of the law, the book's title already suggests that reductive neurolaw deprives law of meaning and purpose, which makes the reductive neurolaw project self-defeating.

Q. Speaking about the "purpose of the law," you spend some time in the Garden (so to speak) talking about the "loss of law" through Adam's disobedience. You write: "[j]udicially . . . Adam has been placed outside the law," thus removing him from the means "to live in accordance with the grace of reason." What role did the Ten Commandments as positive law play in restoring mankind to its ultimate meaning and purpose?

A. We are entering some deep theological terrain here, which I'm trying to address dialectically and in sort of an Augustinian-existentialist mode in this part of the book. In the paragraph you're quoting from on page 215, I say "[t]he law [to Adam] had become something at least partially external, at least partially inaccessible. He became alienated from the law, in a state of exception."

"Partially" does lots of work here in preserving space for the post-lapsarian human capacity to know the natural law — something I develop a bit more in my first book, *Law and Theology: Classic Questions and Contemporary Perspectives* (Fortress Press 2019). The "state of exception" refers to the discussion of Agamben and Derrida (and through Derrida, of Pascal) earlier in the chapter. What I'm trying to say is that the law in the Garden is the law of *love*. If we live fully in accordance with love, with God who is love, there is no separation between "law" and "freedom" — or

[*] David Opderbeck is Professor of Law and Co-Director of the Gibbons Institute of Law, Science & Technology at Seton Hall Law School. His work focuses on intellectual property, cybersecurity, and technology law and policy.

between "grace" and "nature." But, of course, in this life, outside the "Garden," we don't live this way, and we can't. This isn't just juridical in some externally imposed way, it's an ontological reality.

The purpose of the Decalogue in relation to the natural law is interesting and contested in the history of Christian thought. I also address this more deeply in *Law and Theology*. I understand the Decalogue as a culturally and historically contingent expression of certain principles of the natural law that is uniquely formative of the missional community God calls into being in Israel, onto which we within the Christian Church are ingrafted. The Decalogue, then, is still a *mediated* form of law — according to scripture, apparently, mediated by Angels — and yet, it is not *merely* a form of human positive law. It encapsulates principles that are close enough to the truth of the natural law that it has a kind of universal applicability, and yet it is given *to Israel*, and by extension to the Church, as the basis for an alternative politics that begins to embody now the eschatological reign of God.

Q. Let me ask you about another statement in this same vein then. Citing Pope Benedict, you note that "the loss of relational friendship occasioned by the fall is precisely the loss of the law," and "Christ's fulfillment of the law enables us to overcome the ban of exclusion from our humanity and recover our participation in the law of love." Can you explain what you mean by this?

A. One of the theological questions my book investigates, if a bit obliquely, is the meaning of Christian doctrines of fallenness and "original sin" in relation to the facts of biological evolution, including human evolution. It's easy to completely demythologize these truths to avoid any tensions, or alternatively to create a conflict between faith and science by insisting that the biblical narratives are somehow literally historical — too easy, I think. One way through this tension is that taken by Pope Benedict in his splendid little book *In the Beginning: A Catholic Understanding of Creation and Fall* (Eerdmans 1995): the "fall" is not so much a quasi-biological event as a rupture of relationships between humans and God, humans and other humans, and humans and the rest of creation.

But, I think there is also something *ontological* about our fallenness. In the book I emphasize St. Athanasius' discussion of this subject in his beautiful text *On the Incarnation of the Word*. Athanasius emphasizes that "law" was present in the Garden, but his sense of law is *also* relational. It's really about what Western theology has come to call "natural law," but I think in a much less juridical sense than developed in the Western tradition. This creational "law" is simply that we are made to relate to God, creation, and each other in a way that transcendentally binds us together and, in that sense, actually constitutes what we *are*. The Platonists used the notion of "participation" for this concept, which was picked up and developed by the Greek Church Fathers and is also richly present in Western luminaries such as Augustine and Aquinas.

When Adam and Eve ate from the Tree of the Knowledge of Good and Evil — again, this, I think, is not "literal history," but at the same time is a truth about an event within the history of humanity — something about our participation in God's life, in creation's life, in our own lives individually and collectively, *broke*. Adam and Eve were banished from the Garden (Gen. 4), which represents for all of us our self-exclusion from full participation in the unbroken, perfect love of God. As Athanasius notes, we find ourselves distant from that which prevents our "natural" corruption into the abyss of death.

The Incarnation reconstitutes humanity. Christ on the cross bears the power of death and in the Resurrection defeats and reverses that power. In fact, the cross is the "Tree of Life," from which humanity may now eat, and the leaves of which "are for the healing of the nations." (Rev. 22:2). Through Christ's victory we can realize our full humanity, the end of which is *theosis*, participating fully in God's life in accordance with our created nature.

In the final chapters of the book, I connect this with how we experience both natural law and positive law in the space in between the Garden and the final City (the New Jerusalem, the eschatological future). Positive law in particular is connected with power and exclusion. This experience is a necessary grace, but the goal is freedom, not exclusion. I develop this further in *Law and Theology*, and I'm looking down the road at more work on how the Apostle Paul develops this theme of the fulfillment of the law. The final end is when the law of the Garden, the reality of God's Trinitarian life, the law of love, is fully internal to us.

Q. The book deals not only with theology and neuroscience, but also with intellectual history. Can you explain how various doctrines throughout the Middle Ages (e.g., voluntarism, nominalism, positivism) elided God's being from the equations of law and justice, and set us on a course for legal reductionism and nihilism?

A. This is a hotly contested question in historical theology and philosophical theology. In my view, in later scholastic theology — in thinkers such as Duns Scotus and William of Ockham — God starts to look more and more like another being *within* the universe, and more and more like a creature that arbitrarily wills things. This is in contrast to the transcendent God who is being itself and who in His essence is at once perfectly loving, good, true, and just. These are the fruits, I suggest, of voluntarism and nominalism. The later modern development of positivism — both logical positivism in philosophy and legal positivism, I think, bears a trace of the earlier moves towards voluntarism and nominalism in Western theology prior to the Enlightenment. The problem of modernity, then, is not that the Enlightenment suddenly jettisoned theology. The problem is the theology itself set the stage for modernity.

Some theologically astute readers might vigorously protest this narrative. It is, in fact, a well-worn story that has featured in some Catholic polemics against Protestantism, in the Cambridge Platonist movement, and in the Radical Orthodoxy movement. Advocates of Scotus and Ockham argue that those thinkers freed Western thought from an ossified Aristotelianism. Many Lutheran and Reformed scholars, of course, defend Luther and Calvin against the claim made by folks such as Brad Gregory that the Reformation amplified voluntarism and nominalism in a way that basically destroyed Western civilization.

I studied my Ph.D. with the Radical Orthodox folks. I try very hard in this part of the book to read the primary sources closely and to nuance the argument. I don't buy into the "Scotus is the problem" line *tout court*. I'm still a Protestant. I try to read Scotus, Ockham, Luther, and Calvin charitably. I do think, though, that this deeper history illuminates a rich set of questions about our "secular age" (quoting Charles Taylor) and its theological roots.

Q. Here, I am reminded of Romano Guardini's *The End of the Modern World*, when he points to the dishonesty of the contemporary world when it attacks Christianity for its revelation, while appropriating its ethical values through the rhetorical legerdemain of "discovery." What are some of the ways we can begin to restore the character of the legal system without surrendering to a loss of memory?

A. I'm going to sound far too revanchist here, I'm afraid, but I agree with thinkers such as Charles Taylor and Alasdair MacIntyre: we need to speak boldly again about the deep philosophical traditions from which our concepts of law and justice derive. It's a genealogical and archeological project in many ways. At the same time, let me emphasize MacIntyre's discussion of how a tradition is "extended" in time. A living tradition lives, breathes, and changes. Disciplines such as critical race theory, along with liberation theologies, are teaching me how much critique matters, particularly in the American context, where slavery and racism are at the core of our history. And yet, in my view, without the transcendent metaphysical stance of the Jewish, Classical, and Christian intellectual traditions, critique loses its normative authority.

Q. Let me shift gears a bit here and ask you about another part of the book. You talk about this "universal acid of neurolaw" that has a corroding effect on our understanding of justice. Can you explain this to me in relation to our earlier discussion of legal reductionism?

A. Reductive neurolaw is based in materialism — that is, the claim that matter and the laws of nature are in the end really all that exists. I think materialism is self-defeating. We can't be having a reasonable argument about the truth of materialism if materialism is true, because our minds, our reason, our arguments, are not in fact real. So, if neurolaw is true, there is no justice. Justice is related to transcendental properties of being. Of course, we could redefine "justice" to have a different meaning, derived from pragmatism or some other entirely immanent kind of philosophy. That is nominalism and voluntarism in action — the word is a name without any corresponding reality, arbitrarily constructed within contingent history.

Q. One of the things that concerns me relates to your understanding that materialism seems inevitably to lead to nihilism — the so called "abolition of man" of C.S. Lewis. Are you concerned that we no longer have the intellectual language to speak of the law in transcendent terms in order to bind conduct?

A. I do indeed share that concern. Reductive neurolaw is in fact the abolition of humanity. "Humanity" is a universal. It implies some kind of enduring nature with a real value in which every particular human being shares. I don't see how a concept of "human rights" perdures without a universal human nature. (I wrote about this recently in a law review article on "rights" in artificial intelligence systems.) Reductive neurolaw says there is no universal humanity — there are only billions of instances of brain chemistries, determined by impersonal physical laws that by this logic can't even be called "laws." There can be no "intellect" or "language" at all, because all such appearances are epiphenomenal artifacts without substance.

Q. This of course all has grave ramifications for our understanding of justice. I'm curious what happens if we remove the transcendental truths of higher purpose undergirding the law and its function to serve mankind according to a universal design. Is there some other higher principle by which Christians and non-Christians can negotiate a lasting peace and start rebuilding our cities?

A. I'm not quite sure what "start rebuilding our cities" means here. When I hear phrases like that in our current moment, sadly, I worry about what political agendas lurk within! I'll also push back some on the notion of Christian and non-Christian negotiating a lasting peace, as though political theology and the *missio Dei* were about something merely agonistic and immanent. In my *Law and Theology* book, I discuss some historic perspectives on the relationship between Church and State, including sources such as Origen and Lactantius who at least partially predate the Constantinian shift. The Apostle Paul asked the Roman Christians to live peaceably in their communities (Romans 12:18). Origen and Lactantius argued that the pagan Roman *polis* should accommodate Christians because people who developed Christian virtues would be the best citizens and would facilitate social harmony. I don't think Paul or Origen could have imagined something like the raft of "Jesus Saves"-type banners flying at the January 6, 2021, insurrection. Maybe Lactantius wouldn't have been surprised, particularly as he became one of Constantine's key advisors later in his life.

But, to circle back to your question: Augustine, paraphrasing and modifying Cicero, said that a republic is a multitude of rational beings gathered around that which they love. Without some real notions of "reason" and "love," peace is impossible. Love involves an understanding of worth and dignity, and reason directs and orders our loves. Just starting some conversations about reason and love might be a good place to begin.

Q. That's good! And your earlier point about the utility of critique is well taken. On this point, are you concerned that our capacity to critique well is too closely tethered to our ability to be well informed and political partisanship we see throughout has made it too difficult for people to engage contrarian views?

A. We all love to reference Thomas Jefferson's statement that democracy requires a well-informed citizenry, and this is true. In one sense, the average American today is vastly better informed than even the elites of Jefferson's day, including Jefferson himself. But we are also, of course, mal-informed by the incessant drone of popular culture and social media.

I think my calling regarding this mal-formation is more of a "prophetic" one (if I can use that word) within Christian communities, more so than in the broader society. The problem that pains me so greatly is that segments of American Christianity — both Protestant and Catholic — have been so corrupted by lies and rancor in the name of truth. Jefferson's famous (and often misquoted) statement comes in a letter he wrote to Richard Price on January 8, 1789, in response to a long missive from Price, who was a dissenting English Unitarian clergyman and prolific writer. In his letter to Jefferson, Price asked "what is the religion of many persons but a kind of demonism that delights in human sacrifices and causes them to look with horror on the greater part of mankind?" Jefferson responded, "I concur with you strictly in your opinion of the comparative merits of atheism & demonism, and really see nothing but the latter in the being worshipped by many who think themselves

Christians." Jefferson then went on to discuss how the ratification of the new Constitution provided him with "a new and consolatory proof that wherever the people are well informed they can be trusted with their own government[.]"

For Jefferson and Price, a rational (as they saw it) Deistic religion and a rational (as they saw it) Constitution were being proposed to a people who were capable of acting rationally, if well informed. The kind of philosophical and theological movements that resonate with me deconstruct this kind of Enlightenment rationalism. For example, Price's apparent criticism of the atonement in his letter to Jefferson ("human sacrifices") is, I think, an eye-rollingly inept misconstrual of what it meant for God to give himself on the cross in the person of the Son — the kind of memefied trope that gets recycled by the new atheists and process theologians and Facebook trolls and so-on today.

And yet, here at the dawn of the Constitution we American lawyers now revere, Jefferson and Price recognized the problems certain kinds of Anglo-American Christianity can pose for a peaceable democratic society. And at least in this narrow sense, they were right. Of all people, we Christians should recognize the need for epistemic humility. We know that our faith is continually seeking an understanding we won't fully realize until we see Christ face to face. (1 Cor. 13:12).

Q. Let me shift gears once more and talk about the consequential argument that concerns me most given the nature of our modern "physicians." C.S. Lewis noted in his essay "*The Humanitarian Theory of Punishment*" that removing various forms of punishment from jurists ("whom the public conscience is entitled to criticize"), and placing them in the hands of technical experts ("whose special sciences do not even employ such categories as rights or justices"), will yield to a special sort of tyranny operating under the guise of acting for the good of its victims — for "those who torment us for our own good will torment us without end for they do so with the approval of their own conscience." I got the sense that your book was forecasting such a dystopia. Any validity to this being a future in the neurolaw regime?

A. In the book I talk about what some versions of neurolaw would look like given the population of the United States and a normal distribution of personality traits (pp. 149-150). Contrary to the goals of the most reductive neurolaw proponents, it would have to result in a massive expansion of the criminal (or neurological?) justice system. So, yes, my book is part of a larger argument against technocracy. That said, I'm not sure how I feel about the C.S. Lewis essay you mentioned. There are important discussions today about restorative justice in relation to retributive justice. And I agree whole-heartedly with the concern behind some neurolaw proposals that the U.S. criminal justice system embeds systemic racism that results in massive over-incarceration of people of color and produces inhumane conditions.

Q. Following up on this, in her book *How Emotions Are Made*, Lisa Feldman Barrett argues for a fundamental shift in the way we understand aspects of criminal culpability rooted in incorrect assumptions jurors make about criminal intent (i.e., *mens rea*). There was some discussion on this in Chapter 3 involving David Eagleman, who famously reduces "responsibility" to a "social construct" and thus sees the law merely as a tool for engineering society. To borrow the title of the new David Cronenberg film, do you sense that reductive neuroscience will change the way that crimes of the future are imagined?

A. I don't see Eagleman-type neurolaw having much direct purchase in the near future. It's too radical a concept and the criminal law is too deeply grounded in the common law. But, I think some of the concepts floated by folks like Eagleman increasingly could be encoded in artificial intelligence algorithms that are likely to impact the administration of justice in coming decades. I'm doing lots of work now on AI ethics, including concepts of transparency, accountability, and algorithmic bias. Like developments in neuroscience, AI technology could benefit the administration of justice, but it could also make the law less humanistic. We need to keep coming back to the basic truth of human dignity and accountability to higher truths so that we govern the machines rather than the other way around.

Q. Can we pull on this technology thread a bit further since it's an issue that I've come to embrace of late thanks to another author of this volume (Jason Thacker). You talk broadly about the consequences of reductive neurolaw, is there

a comparable threat of surrendering the legal system to AI or other technological innovations?

A. For the legal system, issues of accountability, transparency, algorithmic bias, reliability, and privacy arise with some urgency when big data analytics are used in "predictive policing," smart contracts, e-discovery, and bail or sentencing decisions. We aren't at the point yet where higher-level decisions on complex legal matters could be outsourced entirely to an AI system. That could certainly present problems, particularly if there is limited human oversight. I think we should resist any notion that the law is a machine. This doesn't mean we shouldn't use machines such as AI systems within the legal system when they can help make things more accurate and efficient. It does, however, mean that it's all the more important to recover and develop our sense of law and the legal system as a humanistic enterprise, that is, a Christian or other religious or transcendent humanism in which the "human" is a universal kind.

Q. You skillfully describe the rise of reductive scientism and the abandonment of idealism and neo-Aristotelian perspectives on philosophy during the Renaissance period. But even more acutely, you ask why this trend took place — lamenting that plagues, famines, and war rent the social economic fabric, *and* that no ecclesiastical or political orders was equipped to lead productive change. I see a lot of this happening today in the United States, making me weary about the state of our intellectual fashion heading into a new digital age. Do you think the ecclesiastical or political orders today can overcome a further slide into a reductive materialism; and, if so, what <u>should</u> Christians do today to begin slowing these trends?

A. I address some of this in my first book, *Law and Theology*, particularly in the conclusion to that text. In theological terms, we're asking a very big question about eschatology, the Church, and the *missio Dei*. The *missio Dei* is about the renewal of all of creation, including all of human society and culture (what scripture calls "the nations") — but *not* through violence, including the violence of the positive law. That renewal comes from the sacrificial death, victorious resurrection, and awaited *Parousia* of Christ. The "end" of creation — its *telos*, its purpose — is that, through Christ, God will be all in all (1 Cor. 15:28). Lawyers, law professors, legal theorists, legislators, judges, living in our particular times and places within history, have a vocation to help restrain evil and injustice, preserve civil order, facilitate the liberation of the poor and oppressed, and bear witness to the victory of Jesus Christ over the powers of death and violence. The moment we think it is our job, and within our power, to establish the Kingdom of God without reserve in the City of Man, is the moment we have fallen into idolatry, replacing the *Parousia* of Christ with our own ambitions. I don't want any of my writing to serve as a summons to a culture war. I want it to be part of a flow of patient, humble, and yet humbly vigorous, witness to the mercy, goodness, and justice of God, made known in Christ, the *Logos*, and the Lamb. If I can even approach something like that, I hope I will have worked on something that will endure (see 1 Cor. 3). The bigger flow of history, intellectual fashion, and so-on is not something I can much influence and so I'm learning to leave that to God.

Q. I resonate with this desire to avoid being part of this "culture war" infrastructure. Paul in Galatians 3:24 writes that "the law was our tutor to bring us to Christ, that we might be justified by faith." So, often, I'm struck by how much Christians forget the earlier verse where Paul condemns the church for returning to devices of the flesh. (*See* Galatians 3:3). Given the importance of objective thinking, open contestation, and dispassionate analysis taught in law schools, I'm wondering if the legal system at large can help us navigate our ideological differences in order to restore a civil society?

A. First, I'll note that I'm very interested in Paul's understanding of the Law. What a fascinating verse from Galatians you chose, complete with a grammatical question: is *eis Christon* to bring or lead us to Christ (NASB and David Bentley Hart), or "until Christ came" (NIV and NRSV), and how does this relate to Paul's use of *dikaioó* in the subjunctive mood (*dikaiōthōmen)*? All beyond my present skills in Greek, I'll admit, but Paul does seem impressed by this idea of the Law as a *paidagōgos* — really, not so much a teacher as a guide or guardian who would accompany a young male throughout his day. Paul of course is talking about the *Torah*, within the broader con-

text in his letters to the Galatians, Romans, and Corinthians regarding the relationship between Gentiles and Jews after the coming of Christ.

It's not really a sound exegetical move to apply Paul's complex treatment of the *Torah* and the inclusion of the Gentiles within God's covenant community directly to Greek or Roman or Anglo-American positive law. But, there is a principle here that I think Christian thinkers have rightly developed in many different contexts: one core function of positive law is as a preservative. Thomas Hobbes' view of the state of nature was wrong insofar as it meant to describe the truth of created human nature, but he was right that, without positive law, human beings as we now find ourselves — outside the Garden — inevitably devolve into violence. Respect for the rule of law, reflection on the law's positive examples, and where necessary the force of the law's prohibitions, keeps us from destroying ourselves before we can discern the deeper law, the law of love written by the *Logos* of creation.

I want to say now that this is why I think the January 6 insurrection, to the extent it was carried on under the banner of Christ, was blasphemous. The lawlessness behind that event, the ideologies behind it that disdained the rule of law, disclosed powers and principalities opposed to conditions that allow the Kingdom of God to become manifest. In just the opposite way intended by the perpetrators, it was an *apocalyptic* moment, a moment of unmasking.

I'm introducing some hesitancy here — I *want* to say this by not quite saying it — not because I have any sympathy for the insurrectionists, but because things can quickly become complicated. An unjust law is no law, both Augustine and Aquinas agreed, and Martin Luther King Jr., Bonhoeffer, and many others give us positive examples of Christian civil disobedience. In my mind, the difference with MLK is that the means were peaceful, the goal was the beloved community in which all are fully valued, and the result was change *through* the rule of law. Every historical moment has its own challenges and inflection points. In my mind, this is a moment for us Christians to remember that Jesus exchanged his power for the cross (Phil. 2:5-11).

So, can we engage in spirited debate about first principles, recognize the innumerable contingencies of any version of the positive law, advocate in the public square for what we believe to be right, and yet remember that all of this points to something most basic that unites us as human beings? For us Christians, can we center the narrative of God reconciling the world to himself in Christ and recognize our work as lawyers within the domain of a reconciliation that far exceeds any historical political community? Let those seeds grow.

Q. Amen! My last question is a simple one — although I suspect the application of right remedy challenging. How does the Christian Church restore its place in the contested public space given the mounting role of suspicion that surrounds its public theology (e.g., January 6)?

A. This is the simple one!? Well, I can't answer for the "Christian Church" as a whole, if we can even develop an ecclesiology that would adequately define such a thing. I'm also not sure I can go with the phrase "restore its place," as if there was ever such a place and as if restoration were the goal. But, let me try to answer as a Protestant with evangelical roots who is an Elder in a mainline Presbyterian church, who studied with Anglo-Catholics and Post-liberals, who wants to hear from liberation and other contextual theologies, and who teaches in a Catholic university, in a way that reflects the conclusion of my *Law and Theology* book (whew!): the work of law and public policy in any contingent moment of history is part of the *missio Dei*, but it is not THE *missio Dei*. The Church is called to be an alternative community that embodies and bears witness to the Kingdom of God brought into being through God's act in giving himself for us in the person of the incarnate Son whose resurrection defeats all the powers of sin and death and restores all the goodness of life and new creation. Any one of us as part of that body extended across the nations over thousands of years has some seemingly small but Divinely important roles to play in the unfolding of that mission. Let's take some time to listen and learn before we speak. Let's speak robustly and boldly but always in ways that point away from ourselves and towards Jesus and his concerns — the least, the smallest, the outcast. I hope I can at least contribute a little to something like that.

O. Carter Snead, *What It Means to Be Human: The Case for the Body in Public Bioethics* (Harvard University Press, 2020). 336 pp.

*Book Review by Dr. John W. Kleinig**

In his award-winning book on public bioethics, Carter Snead joins a growing cohort of voices that call for our society to pay due attention to the importance of human embodiment, something that has been too often overlooked and ignored in academic circles and public culture, which identifies the personal self with self-consciousness and dissociates the conscious mind from the sentient body. He analyzes the current federal laws in the United States that deal with the beginning and end of human life as test cases for their understanding of what it means to be human. His focus is on three of the most controversial areas of legislation – abortion, assisted reproduction, and death.

Snead examines the origin and development of this legislation to discover, explain, and assess the rationale for them, a rationale that goes beyond the foundation of particular laws on constitutional rights, legal precedents, and standard judicial norms, to the anthropological rationale for them. Thus, his main concern is for their implicit and explicit anthropology, their view of "what it means to be human and thrive as a human being."[1] His stated purpose is this: "the first task at hand is to subject the core disputes of American public bioethics to a searching, inductive *anthropological* analysis that will uncover, illuminate, and critique the conception of human identity and flourishing that underwrites current law and policy."[2]

The supreme value of this study lies in its exclusive focus on three bioethical issues as well as the wide reach of its conclusions for public bioethics, public policy, and medical practice. Since I am not a lawyer or legal scholar with the competence to assess its legal data, I shall, instead, limit my review to what is most persuasive in Snead's analysis and suggest how his case for an anthropology of embodiment could be strengthened.

For me there are two most commendable features of Snead's work—his critique of current legislation for the beginning and end of human life for its exclusive foundation in an anthropology of expressive individualism; and, his corrective of that view by an account of human identity that embraces the reality of our mutual dependence and vulnerability as embodied beings, as well as the truth of human freedom and particularity.

Snead is persuasive in his claim that current American laws for the beginning and end of human life are governed by the anthropology of expressive individualism, a view of what it means to be human that has been articulated most cogently by Robert Bellah and Charles Taylor.[3] It "defines the human being fundamentally as an atomized and solitary will" and "equates human flourishing solely with the capacity to formulate and pursue future plans of one's own invention."[4] Such people are characterized by the desire

* Lecturer at the Australian Lutheran College from 1982 until his retirement from full-time teaching at the end of 2009. His new book is *Wonderfully Made: A Protestant Theology of the Body* (2021). John is featured on Episode #123 of the Cross & Gavel podcast. See inside back cover for QR Code.

1 O. Carter Snead, What It Means to be Human: The Case for the Body in Public Bioethics 4 (2020).

2 *Id.*

3 Robert Bellah, Habits of the Heart 47 (1985); Charles Taylor, Philosophy and the Human Sciences: Philosophical Papers (vol. 2) 187-210 (1985).

4 Snead, *supra* note 2, at 3.

for self-determination and an unencumbered pursuit of their self-devised destiny free from obligation to others. This view of human identity regards the body as an instrument for freely chosen goals in a quest for self-fulfillment. People are held to be free agents who are not subject to what is given naturally, biologically, and socially. Snead maintains that this view of human identity cannot, by itself, "make sense of our fragility, neediness, and natural limits," nor can it "offer a coherent, internally consistent account of our obligations to vulnerable others, including children, the disabled, and the elderly."[5]

Snead is even more persuasive in his proposals for a view of "human identity that embraces not only the truth and reality of human freedom and particularity, but also the vulnerability, mutual dependence, and finitude that result from our individual and shared lives as embodied beings."[6] In this corrective to the reductionism of expressive individualism he builds on the work of Alasdair MacIntyre in *Dependent Human Animals: Why Human Beings Need Virtues*, who argues that embodied human beings depend on networks of "uncalculated giving and graceful receiving" in order to survive and flourish.[7] Snead agrees that they depend on these social networks which are constituted by other people who, like parents with their children and apart from any obvious recompense for themselves, are willing to pursue the good of others who are most vulnerable and in need of care in all stages of their life cycle. By their dependence on these networks and their participation in them, they eventually "become the sort of people who can care for others in the same way."[8] As embodied beings we too, even if we are not at all disabled, are indebted to others and dependent on them for our wellbeing. That was so for us most obviously in infancy and will possibly be so in old age.

As I read this splendid book, I wondered how its appeal might be extended and deepened by consideration of two further issues. On the one hand, it might be helpful to show how all the abstract concepts that we use to express our values, such as freedom and dependence, are not absolute but relative terms. Nor do they necessarily exclude each other. Thus no one is absolutely free; no one is absolutely dependent. What's more, certain kinds of dependence can make for greater freedom, like our reliance on farmers to produce food for us. We can also freely choose to become relatively dependent on another person, like our spouse in marriage. On the other hand, it might be useful to envisage the networks that are essential for the order of a flourishing community as a natural, personal, social, moral ecosystem that is characterized by the ordered interdependence of all its parts as well as their good governance by those who constitute it and are responsible for its foundational relationships, such as parents with children, teachers with students, employers with employees, rulers with citizens, and so on. That and much more could well be considered in ongoing public debate on what it means to be embodied people.

5 *Id.* at 7.

6 *Id.*

7 *Id.* at 5.

8 *Id.* at 7.

Steven K. Green, *Separating Church and State: A History* (Ithaca: Cornell University Press, 2022). 236 pp.

*Book Review by Mark David Hall**

For ten years, Steven K. Green served as legal director and special counsel for Americans United for Separation of Church and State. He earned a Ph.D. in history in 1997, and is currently the Fred H. Paulus Professor of Law and Affiliated Professor of History and Religious Studies at Willamette University.

Green and I are friendly nemeses. We have debated the question "Did America have a Christian founding?" numerous times, and we are currently serving as expert witnesses on opposite sides in a case involving the constitutionality of a Ten Commandments monument. He continues to advocate for the separation of church and state, but he is able to put his activism aside when he writes as a historian which, he notes, is his "preferred voice."

Green traces the idea that church and state should be separated to Augustine and Gelasius, although he could have traced it to the Old and New Testaments. He shows that many advocates of church-state separation in early America, including William Penn, Roger Williams, and Isaac Backus made biblical and theological arguments in favor of the idea. He acknowledges that most of these early advocates thought that it was appropriate for civic authorities to protect, encourage, and support Christianity in a variety of ways.

Turning to the founding era, Green ably demonstrates that Americans were coming to desire a greater degree of separation between church and state than had previously been the case. The nine states with established churches began the process of disestablishing them, the new Constitution banned religious tests for federal offices, and the first federal Congress proposed, and state legislatures ratified, what we now know as the First Amendment.

In discussing the formation of the First Amendment, Green makes the common mistake of claiming that Madison's speech introducing the Bill of Rights contained "two amendments . . . that dealt with religion." The first evolved into the familiar words of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The second, which would have prohibited states from violating "the equal rights of conscience," was rejected.

But Madison proposed a third amendment concerning religion, one which would have added to the Second Amendment the requirement that "no person religiously scrupulous of bearing arms shall be compelled to render military service in person." This is important because some advocates of church-state separation claim that religious accommodations are inappropriate and/or unconstitutional. Madison, who wanted a greater degree of church-state separation than most founders, clearly did not agree. Although this provision was eventually cut, most states and the federal government have permitted religious pacifists to hire substitutes or perform alternative service rather than serve in combat units.

Few founders understood the Establishment Clause to erect a "wall of separation between church and state," although Thomas Jefferson asserted that it did in his famous 1802 letter to the Danbury Baptists. Green acknowledges that the federal and state governments continued to protect and promote Christianity in a variety of ways in the eighteenth and nineteenth centuries.

The idea that church and state should be separated received an important boost in the nineteenth century when Roman Catholics began to argue that they should receive public funds to support Catholic schools. In 1875, James Blaine introduced a constitutional amendment that would have banned states from funding sectarian (i.e., Catholic) schools. After the

* Herbert Hoover Distinguished Professor of Politics and Faculty Fellow (Honors Program) at George Fox University. Author of the forthcoming book *Proclaim Liberty Throughout All the Land: How Christianity has Advanced Liberty and Equality for All Americans* (2023).

amendment failed to pass in the Senate, many states added similar amendments to their constitutions (known today as "Baby Blaines").

Green acknowledges the connection between anti-Catholicism and growing American support for the separation of church and state in the nineteenth through the mid-twentieth centuries, but he contends that many Americans supported church-state separation for principled reasons. Clearly some did, but as Philip Hamburger documents in his magisterial *Separation of Church and State,* anti-Catholic animus was the primary reason Americans supported groups like Protestants and Other Americans United for Separation of Church and State.

The last two substantive chapters cover the rise and decline of support for the separation of church and state in the twentieth century. They include an able and fair overview of the United States Supreme Court's religion clause jurisprudence. But Green neglects to discuss the view that the separation of church and state, generally, or the Establishment Clause, specifically, prohibits religious accommodations. This is a significant oversight because for at least a hundred years, opponents of religious liberty have made this argument and attorneys and activists continue to make it today.

The Selective Service Act of 1917 exempted from combat service members of "any well-recognized religious sect or organization at present organized and existing whose creed or principles forbid its members to participate in war in any form." In *Arver v. United States* (1918), Chief Justice Edward White dismissed as absurd the argument that Congress' accommodation violated the First Amendment:

> And we pass without anything but statement the proposition that an establishment of a religion or an interference with the free exercise thereof repugnant to the First Amendment resulted from the exemption clauses of the act to which we at the outset referred because we think its unsoundness is too apparent to require us to do more.

As Carl Esbeck has shown, with one exception, the Supreme Court has regularly held that legislatures may craft exemptions to protect religious citizens. Accommodations may, in fact, seem to violate an abstract conception of the separation of church and state, but it is hard to see how they constitute an establishment of religion which is, of course, what the First Amendment prohibits.

Green clearly favors a robust separation of church and state, but *Separating Church and State* provides a reasonable and fair overview of this concept in the United States and how it has been accepted and rejected by jurists, legislators, and activists. It is an excellent primer for those looking for an introduction to the subject, and yet is detailed and rich enough to be of value to experts in the field.

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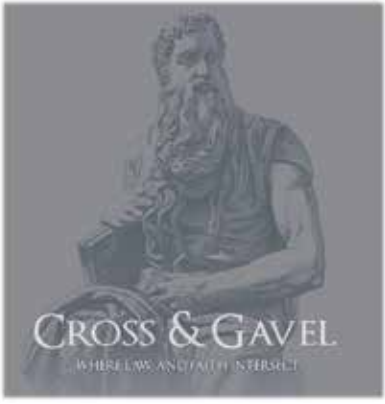

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