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Religious Liberty and Moral Courage: The Right to Fight

Rev. Deacon Thomas J. Davis, Jr. *

ABSTRACT: Emergency contraception (EC) mandates in sexual assault treatment pose an existential threat to authentic Catholic health care. Some impose cooperation in potential embryocide. Shallow grasp of scientific data and confused moral theology are a recipe for disaster, as occurred in Connecticut in 2007, where staunch opposition morphed into pusillanimous “reluctant compliance.” Subsequent emergence of incontestable evidence that EC efficacy can be explained only by postovulatory mechanism(s) of action (MOA) precludes the necessary level of moral certitude to justify cooperation. Recourse to a First Amendment challenge offers little prospect of success, given the Supreme Court’s constriction of free exercise protection. But legislative reaction to the Court’s jurisprudence offers hope. Federal legislation overcame the onerous “contraceptive mandate” of the Affordable Care Act in the *Hobby Lobby* case. Parallel state laws in Connecticut and elsewhere offer viable means to challenge EC mandates. Absent the will to fight the outcome will remain scandalous cooperation.

I shall not submit to injustice from anyone.
Mahatma Gandhi

*Happiness depends on being free, and freedom depends
on being courageous.* – Pericles’s funeral oration in
History of the Peloponnesian War by Thucydides

“This case is an ominous sign.”¹ That warning introduces Justice Alito’s dissent from the Supreme Court’s recent refusal to hear a challenge to Washington State’s mandate that pharmacies distribute emergency contraception (EC) drugs² despite

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¹ *Stormans, Inc. v. Wiesman*, 579 U. S. ___, 136 S.Ct. 2433 (2016) (Alito, J., dissenting).

² The principal emergency contraception drugs are levonorgestrel (LNG, which is marketed as “Plan B,” “Plan B One-Step,” “Next Choice,” and several other generic brands), and ulipristal acetate (UA, which is marketed as “ella”).

religious or moral objections to their abortifacient potential.¹ A district judge took the extraordinary step of enjoining enforcement of the rule after finding that the “great weight of evidence” demonstrated the “predominant purpose” of the regulatory scheme was to “stamp out the right to refuse” and amounted to a “religious gerrymander” directly targeting religious and moral objectors.² Normal constitutional tolerance of incidental burdens on religious free exercise occasioned by neutral laws is abrogated in such circumstances, giving way to heightened scrutiny in defense of liberty because “a law that discriminates against religiously motivated conduct is not ‘neutral.’”³

The United States Court of Appeals for the Ninth Circuit reversed this decision,⁴ and a petition to the Supreme Court followed. The Court’s refusal to hear the constitutional challenge points to increasingly necessary reliance by religious objectors on non-constitutional protections of religious liberty. Legislative protection of religious liberty was the foundation of *Burwell v. Hobby Lobby*,⁵ where a federal mandate for EC coverage in health insurance policies violated the Religious Freedom Restoration Act (RFRA).⁶ That holding has significant implications in states with parallel religious liberty laws.⁷ Several

¹ “Ominous” understates the threat. The regulations prohibit referral of a customer to other nearby pharmacies that willingly distribute the drugs, of which there were “more than 30” within five miles of the plaintiff’s store. 136 S.Ct. at 2433. Reading Justice Alito’s dissent, which generously notes various findings of fact by the district court, one is left with the impression that an industry was being brought to heel by the zealotry of an ideologically driven governor and a Human Rights Commission that threatened pharmacy board members with personal liability if they permitted religious objectors to make referrals to cooperating pharmacies in lieu of direct distribution. *Ibid.* at 2434. In fact, the inflexible scheme was imposed despite *stipulation* that referrals posed no threat to timely access to EC (*ibid.* at 2435).

² *Ibid.* at 2434-35, 2437, and n. 3; *Stormans, Inc. v. Selecky*, 854 F. Supp. 2d 925, 984 (findings of fact and conclusions of law); *Stormans Inc. v. Selecky*, 844 F. Supp. 2d 1172 (WD Wash. 2012) (opinion granting injunction).

³ *Stormans*, at 8, citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 523 (1993).

⁴ *Stormans, Inc. v. Wiesman*, 794 F.3d 1064 (9th Cir.2015).

⁵ 573 U.S. ___, 134 S.Ct. 2751 (2014).

⁶ 42 U. S. C. §2000bb et seq.

⁷ At least twenty-one states have adopted a state version of the federal RFRA: Alabama, Ala. Const. Art. I, sec. 3.01; Arizona, Ariz. Rev. Stat. sec. 41-1493.01; Arkansas, 2015 Senate Bill 975, enacted April 2, 2015; Connecticut, Conn. Gen. Stat. §52-571b; Florida, Fla. Stat. §761.01, *et seq.*; Idaho, Idaho Code §73-402; Illinois, Ill. Rev. Stat. Ch. 775, §35/1, *et seq.*; Indiana, SB 101 (March 26, 2015) and SB 50 (April 2, 2015); Kansas, Kan. Stat. §60-5301, *et seq.*; Kentucky, Ky. Rev. Stat. §446.350; Louisiana, La. Rev. Stat. §13:5231, *et seq.*; Mississippi, Miss. Code §11-61-1; Missouri, Mo. Rev. Stat. §1.302; New Mexico, N.M. Stat. §28-22-1, *et seq.*; Oklahoma, Okla. Stat. tit. 51, §251, *et seq.*; Pennsylvania, Pa. Stat. tit. 71, §2403; Rhode Island, R.I. Gen. Laws §42-80.1-1; South

states mandate EC-related services for rape victims and three require EC-distribution upon request, regardless of religious/conscience objection.¹ Evolving knowledge of the mechanism of action (MOA) of EC presents a quandary. Passive, even reluctant, compliance with EC mandates threaten authentic Catholic identity. State RFRAs provide a mechanism for a challenge.² The Supreme Court's denial of review in the Washington pharmacy case signals a narrowing of constitutional protection. State RFRAs are the last best legal hope to preserve what credibility remains of a shattered Catholic healthcare identity shredded by a decade of retreat, compromise, and cooperation with morally impermissible EC mandates. This essay presents the principal factual and legal foundation for that challenge.

The Conundrum

Connecticut legislates the standard of care for licensed healthcare facilities providing examination or treatment of female victims of rape. They must provide victims with "medically and factually accurate and objective information" about EC, inform of its use, efficacy, and availability, and provide it at the facility on request.³ It prohibits any compliance protocol from requiring testing for anything other than pregnancy, including tests previously utilized to determine if LNG would be offered to rape victims. Four days before the law's effective date, the Catholic bishops of Connecticut reversed their long-standing refusal to accept the exclusion of such testing and acquiesced to the mandate. In announcing that decision, the bishops explained that "doubt about how Plan B pills and similar

Carolina, S.C. Code §1-32-10, *et seq.*; Tennessee, Tenn. Code §4-1-407; Texas, Tex. Civ. Prac. & Remedies Code §110.003; and Virginia Va. Code §57-1. See <http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx>.

¹ Connecticut (Conn. Gen. Stat. § 19a-112e; New Mexico (N.M Stat. Ann. § 24-10D-3), and South Carolina (S.C Code Ann. § 16-3-1350(B)). At least sixteen states and the District of Columbia require hospital emergency rooms to provide EC related services ranging from providing information about EC to actually dispensing EC. One state, Pennsylvania, specifically allows a hospital to refuse provision of EC on religious, moral, or conscience grounds. See <http://www.ncsl.org/research/health/emergency-contraception-state-laws.aspx>. Thirteen states and the District of Columbia require provision of EC to victims of sexual assault at emergency rooms. http://www.guttmacher.org/statecenter/spibs/spib_EC.pdf.

² See Thomas Davis, "Plan B and the Rout of Religious Liberty," *Ethics & Medics* (December 2007).

³ Connecticut permits a facility to contract with a third party "independent provider" but must permit the provision of EC in its facility. Conn. Gen. Stat. 19a-112e(a)(6) and 19a-112e(b)(c). Independent providers must be licensed as a physician, physician's assistant, APRN or RN, or nurse-midwife and must be trained to conduct a forensic exam in accordance with specified sexual assault guidelines.

drugs work” led them to reconsider their stance.¹

Doubt about MOA had long been at the heart of the debate over EC treatment of rape victims in Catholic facilities.² In 2007 that debate was closely associated with the Food and Drug Administration’s (FDA) mandated product literature disclosures.³ The carton text and consumer insert stated that Plan B worked “mainly” by preventing ovulation and may prevent implantation. The FDA required the disclosure to ensure informed consent. In 2007 the dominant view was that LNG was *principally* an anovulant and that post-fertilization MOA was theoretically possible but rare. At about the same time several articles and a politically tinged commentary appeared in the professional literature that seemed to some to exclude any serious risk that LNG had a post-fertilization MOA.⁴ Various Catholic ethicists had previously arrived at that opinion.⁵ Common to most was the assumption that LNG operated primarily by suppressing ovulation, a view shared by the Connecticut bishops. However, they also held that breakthrough ovulation poised a substantial risk of post-fertilization interception. One Connecticut bishop articulated that position at the height of the 2007 debate:

For women who have been victimized by rape...[o]ur Catholic hospitals administer an ovulation test... If the woman is...not ovulating, Plan B...may be administered as a contraceptive, preventing ovulation. When the woman is ovulating, Plan B can act as an

¹ The 2007 statement was originally posted on September 27, 2007 on the website of the Connecticut Catholic Conference but is no longer available on that site. It is available in its entirety at: <http://www.catholicculture.org/culture/library/view.cfm?recnum=7836>.

² A comprehensive discussion of the scientific corpus and its application in Catholic moral analysis is presented in Thomas Davis, “Evaluation of the Mechanism of Action of Anti-fertility Treatment in Cases of Sexual Assault: Moral Certitude and Human Acts” in *Contemporary Controversies in Catholic Bioethics*, ed. J. T. Eberl (Springer, 2017).

³ A comprehensive presentation of the debates that drove the development of the product labeling and product inserts for Plan B through the FDA scientific review regulatory process is set forth in Thomas Davis, “Plan B Agonistics: Doubt, Debate, and Denial,” *National Catholic Bioethics Quarterly* (Winter 2010).

⁴ P. G. L. Lalitkumar, et al., “Mifepristone, but not levonorgestrel, inhibits human blastocyst attachment to an in vitro endometrial three-dimensional cell culture model,” *Human Reproduction* 22/11 (November 1, 2007): 3031-37. N. Novikova, et. al, “Effectiveness of levonorgestrel emergency contraception given before or after ovulation – a pilot study,” *Contraception* 75/112 (2007); F. Davidoff and J. Trussell, “Plan B and the Politics of Doubt,” 296/14 *Journal of the American Medical Association* (October 11, 2006): 1775.

⁵ See for example, D. P. Sulmasy, “Emergency Contraception for Women Who Have Been Raped: Must Catholics Test for Ovulation, or Is Testing for Pregnancy Morally Sufficient?” *Kennedy Institute of Ethics Journal* 16/4 (December 2006); Ronald Hamel and Michael Panicola, “Emergency Contraception and Sexual Assault,” *Health Progress* 83/5 (2002): 12-19. Both accepted the since debunked notion that LNG operates primarily as an anovulant. On that basis alone, their analysis has been rendered largely immaterial.

abortifacient by preventing the fertilized ovum from adhering to the wall of the uterus.¹ The view that LNG “can act as an abortifacient,” especially in the latter part of the fertile window, carried strong echoes of the position advocated by the Pontifical Academy of Life which asserted, “the proven ‘anti-implantation’ action of the morning after pill is really nothing other than a chemically induced abortion.”² That position was challenged at the legislative hearing on the Connecticut mandate by a former FDA advisory committee member who had recently published an influential commentary asserting that Plan B was primarily an anovulant, the efficacy of which could be explained without reference to post-fertilization modalities. He maintained that the Academy’s claim of a “proven” abortifacient MOA found no support in science.³

It is now clear that as the effective date of the legislation approached, the breadth and depth of the existing scientific data were more fully appreciated by the Connecticut bishops. Reassessment concluded that any potential postfertiliza-

¹ Arbp. Henry Mansell, “Plan B,” *The Catholic Transcript* (May 2007), at http://www.archdioceseofhartford.org/writings2/archbmansell_column_07-05-01.ht-m.

² “The Pontifical Academy of Life Statement on the So-Called “Morning-After Pill,” issued in 2000, distinguishes MOA based on the timing of intake and appears to attribute an anovulant MOA to early fertile window use: “The *morning-after pill* is a hormone-based preparation (it can contain oestrogens, oestrogen/progestogens or only progestogens) which, within and no later than 72 hours after a presumably fertile act of sexual intercourse, has a predominantly ‘anti-implantation’ function, i.e., it prevents a possible fertilized ovum (which is a human embryo), by now in the *blastocyst* stage of its development (fifth to sixth day after fertilization), from being implanted in the uterine wall by a process of altering the wall itself. The final result will thus be the expulsion and loss of this embryo. Only if this pill were to be taken several days before the moment of ovulation could it sometimes act to prevent the latter (in this case it would function as a typical ‘contraceptive’).” http://www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20001031_pillola-giorno-dopo_en.html. The recognition that timing of intake within the fertile window is significant is supported by the most recent data. It is virtually undisputed that Plan B has no effect on ovulatory process, including suppression of ovulation, if administered at or after LH surge.

³ Davidoff and Trussell, “Plan B and the Politics of Doubt,” 1777. The authors also proposed several prefertilization MOAs, all of which have since been shown to be insignificant or inapplicable, and in an extraordinary digression claimed that the existing scientific data supported the notion that “Plan B used after ovulation might actually prevent the loss of at least some of the 40% of fertilized ova that ordinarily fail spontaneously to implant or to survive after implantation.” In other words, they asserted that Plan B may actually promote successful implantation when administered *after* the preovulatory fertile phase, a result presumably at odds with any EC user’s intention. While that proposition is contradicted by more recent data (see n. 26 below; Noé in 2010 demonstrated 100 percent efficacy at preventing pregnancy defined as implantation regardless of ovulation), its suggestion in 2006 demonstrates the extremes to which proponents of Plan B would go to resist any suggestion that it may have a post-fertilization MOA.

tion MOA was sufficiently doubtful that compliance with the mandate was morally possible.¹ Acknowledging “serious doubt about how Plan B pills work” while characterizing the preclusion of ovulation testing as “seriously flawed,” the bishops reversed ground and concluded that the mandate’s defects were insufficient “to bar compliance with it at the present time.” In a personal blog two days later, one bishop confirmed:

What’s really at issue here is how much testing is appropriate to ensure that Plan B does not induce the chemical abortion of a fertilized ovum. There is uncertainty about how Plan B works. Its effect is to prevent fertilization of the ovum.² Some believe, however, that in rare instances Plan B can render the lining of the uterus inhospitable to the fertilized ovum, which must implant in it in order to survive and grow; many other experts dispute this.³

The bishops’ statement insisted that the matter remained subject to future review: “If it becomes clear that Plan B pills would lead to an early chemical abortion in some instances, this matter would have to be reopened.” One bishop offered similar assurance:

In the course of this discussion, every possible option was discussed at length with medical-moral experts faithful to the Church’s teaching, with legal experts especially in the area of constitutional law, and with hospital personnel. “Reluctant compliance” emerged as the only viable option.... At the same time, we remain open to new developments in medical science which hopefully will bring greater clarity to this matter.”⁴

¹ The bishops’ position thus veered from one extreme (“proven abortifacient”) to another (“primarily” anovulant), whereas a properly undertaken critical reassessment, carefully attendant to the full corpus of scientific data then available, should never have concluded that prudent doubt concerning post fertilization MOA had not been overcome. But the unfortunate debacle had reached a zenith and the damage was done. The statute has remained unchallenged ever since.

² This curious reference is ambiguous at best. It may refer to a presumed anovulant MOA, which, by preventing ovulation, prevents fertilization. It may refer to a presumed postovulatory MOA, which prevents fertilization, such as inhibited migration, retarded capacitance, prevention of sperm-egg binding, or interference with acrosome reaction. In any event, we now know that these potentials do not explain LNG efficacy at preventing clinical pregnancy.

³ On September 29, 2007 then-Bishop of Bridgeport William Lori posted these comments on his personal blog, formerly accessible through the website of the Diocese of Bridgeport. Several of Bishop Lori’s blogs have been migrated to the website of the Archdiocese of Baltimore where Archbishop Lori is currently the ordinary. Unfortunately, no primary source for the September 29, 2007 writing could be located. However, its content is available at <http://www.creativeminorityreport.com/2007/10/bishop-lori-blogs-on-plan-b-decision.html> and <http://www.freerepublic.com/focus/religion/1905953/posts>.

⁴ The history of the Connecticut Catholic collapse of 2007 is more fully developed in *Emergency Contraception Mandates in Connecticut: A Case History*, available online

The Revolution

Subsequent developments have brought “greater clarity,” undermining fundamental assumptions about MOA, the policy of “reluctant compliance,” and the moral analysis advanced by the Connecticut bishops. Studies published in 2010 and 2011 (Noé data) demonstrate conclusively that LNG is a poor anovulant when taken in the critical fertile window.¹ They plainly show that despite ovulation rates in excess of 80 percent, fertile window administration of LNG resulted in 100 percent efficacy at preventing clinical pregnancy.

Subsequent analysis of the Noé data noted that “[t]he dominant follicle persisted for at least 5 days in 14.6% (7/48) of LNG cycles, not different than placebo (4%).”² Stated otherwise, in 85.4 percent of cases, LNG did not prevent ovulation. In view of this remarkable data, leading EC researchers acknowledge that “in the late follicular phase...LNG cannot delay or block ovulation any better than placebo, and follicular rupture occurs shortly and similarly after treatment with LNG or placebo.”³ While the study suggests that LNG may have anovulatory properties in some cases when administered *earlier* in the fertile phase, follicular rupture (FR) still occurred in the majority of those cases (55 percent). When administered prior to ovulation, “women did not become pregnant in spite of the fact that follicular rupture following treatment,” which can only mean that a post-ovulation MOA “must also play a role in the efficacy of LNG EC.”⁴ But the Noé data demands more than timid revision. The FR rate in excess of 80 percent demolishes prior claims of MOA and makes it indisputable that LNG prevents pregnancy primarily by postovulatory effects. While several postovulatory yet prefertilization MOAs have been proposed, most have been debunked,⁵ delimited

at <http://www.holyapostles.edu/wp-content/uploads/Emergency-Contraception-Mandates-in-Connecticut-A-Case-History.pdf>.

¹ G. Noé, H. B. Croxatto, et al., “Contraceptive efficacy of emergency contraception with levonorgestrel given before or after ovulation,” *Contraception* 81 (2010): 414-20, and G. Noé, H. B. Croxatto, et al., “Contraceptive efficacy of emergency contraception with levonorgestrel given before or after ovulation,” *Contraception* 84 (2011): 486-92.

² Horatio Croxatto, Vivian Brache, et al., “Ulipristal acetate prevents ovulation more effectively than levonorgestrel: analysis of pooled data from three randomized trials of emergency contraception regimens,” *Contraception* 88 (2013): 611-18 at 614.

³ *Ibid.*, 616.

⁴ *Ibid.*, 617.

⁵ Josiane A. do Nascimento, Markku Seppala, Antero Perdigoão, Ximena Espejo-Arce, Maria José Munuce, Laura Hautala, Riitta Koistinen, Liliana Andrade and Luis Bahamondes, “In vivo assessment of the human sperm acrosome reaction and the expression of glycodelin-A in human endometrium after levonorgestrel-emergency contraceptive pill administration,” *Human Reproduction* 22, no. 8 (2007): 2190-95; Rebecca Peck, Juan Velez, “The Postovulatory Mechanism of Action of Plan B: A Review of the Scientific Literature,” *National Catholic Bioethics Quarterly* 13/4 (2013): 1-40;

to narrow percentage of cases,¹ or shown to offer no more than theoretical biological plausibility.²

LNG's primary efficacious mechanism remains elusive, but the suggestion that post fertilization MOA would be "rare" because ovulation is "rare" has passed onto the ash heap of history.³ Nonetheless, the powerful Noé data has not precluded continued assertion that Plan B operates primarily by suppressing ovulation. In September 2013, the Department Health and Human Services (HHS) maintained that Plan B "works mainly by stopping the release of an egg from the ovary" even while acknowledging a possible interceptive effect.⁴ That position evolved in the HHS brief in *Burwell v. Hobby Lobby*, which claimed "Plan B...

Bruno Mozzanega and Erich Cosmi, "How do levonorgestrel-only Emergency contraceptive pills prevent pregnancy? Some considerations," *Gynecological Endocrinology* 27/6 (2011): 439-42 (2011); Thomas Davis, "Letter," *National Catholic Bioethics Quarterly* 10/4 (2010): 641-44; Thomas Davis, "Plan B Agonistics: Doubt, Debate, and Denial," *National Catholic Bioethics Quarterly* 10 (2010): 741-72; Thomas Davis, "Letter," *National Catholic Bioethics Quarterly* 11/2 (2011): 212-16; Thomas Davis, "Letter," *National Catholic Bioethics Quarterly* 13/1 (2013): 14; Thomas Davis, Justo Aznar, Hanna Klaus, Judith Mascolo, Bruno Mozzanega, Dominic Pedulla, Julio Tudela, and Patrick Yeung, "Letter," *National Catholic Bioethics Quarterly* 13/4 (2013): 582-86; Thomas Davis, Justo Aznar, Kathleen Berchermann, Donna Harrison, Bruno Mozzanega, Rebecca Peck, Dominic Pedulla, Kathleen Ravielle, Walter Rella, Julio Tudela, Juan Velez, and Patrick Yeung, "Letter," *National Catholic Bioethics Quarterly* 15/1 (2015): 5-8.

¹ Rebecca Peck, Walter Rella, Julio Tudela, Justo Aznar, and Bruno Mozzanega, "Does levonorgestrel emergency contraception have a post-fertilization effect? A review of its mechanism of action," *The Linacre Quarterly* 82 (2015): 197-202; Walter Rella, "Letter," *National Catholic Bioethics Quarterly* 13/1 (2013): 7-10.

² Vivian Brache, Leila Cochon, Maeva Deniaud, and Horacio B. Croxatto, "Ulipristal acetate prevents ovulation more effectively than Levonorgestrel: analysis of pooled data from three randomized trials of emergency contraception regimens," *Contraception* 88 (2013): 611-18 at 617. See also Thomas Davis, "Evaluation of MOA: Moral Certitude and Human Acts."

³ Archbishop Lori's 2007 statement suggested the possibility, though disputed, of a "rare" abortifacient effect, a position unquestionably based on the view that ovulation itself was rare. That view cannot be sustained in view of the Noé data. If an abortifacient effect is real, it is not rare as ovulation is common. His further suggestion that Plan B's "effect is to prevent fertilization of the ovum" seems, in context, to assert a primary MOA. That could mean that fertilization was thought avoided through suppressed ovulation or it could mean that credence was given to other postovulatory MOAs, such as inhibited sperm migration, capacitance, sperm-egg binding, or ovum resistance to fertilization, but those explanations have, at best, marginal explanatory power. Either way, Bishop Lori's observation is plainly erroneous.

⁴ Petition for Writ of Certiorari, *Kathleen Sebelius, Secretary of Health and Human Services v Hobby Lobby Stores, Inc.*, p. 10 n. 5. Available at http://sblog.s3.amazonaws.com/wp-content/uploads/2013/10/2013-0354.pet_aa_1.pdf.

works principally by preventing ovulation *or fertilization* by altering tubal transport of sperm and/or ova; it may inhibit implantation.”¹ HHS’s concession that the “principal” MOA could not be limited to anovulation carries the necessary implication of increased abortifacient potential, as it must accept that ovulation is occurring. However, HHS failed to acknowledge what the Noé data make undeniable: anovulation is a minor player, and postovulatory MOA dominates the field of LNG efficacy. HHS’s suggestion that principal mechanisms include altered tubal transport is similarly troubling. That is not the case with sperm, which undermines retarded ova transport theories since sperm reaches the ampulla, where ova are deposited in the fallopian tube and where most fertilization occurs. Altered embryo transport may be operative, but that would be abortifacient.²

In his majority opinion, Justice Alito made reference to the HHS position when he called attention to Hobby Lobby’s moral objection “to providing health insurance that covers methods of birth control that, as HHS acknowledges . . . may result in the destruction of an embryo.”³ Like the HHS mandate, the Connecticut EC mandate demands that religious/moral objectors cooperate⁴ in the provision of drugs whose abortifacient potential cannot be excluded from reasonable doubt. And the cooperation demanded is unquestionably more proximate, since it requires direct provision of potentially lethal drugs rather than an employee insurance benefit.

The task of separating objective scientific data from the subjective opinion

¹ Brief of Petitioner at p. 9 n. 4. Available at http://sblog.s3.amazonaws.com/wp-content/uploads/2014/01/01.12.14_brief_for_petitioners_doj.pdf (emphasis added).

² See Rebecca Peck and Juan Velez, “The Postovulatory Mechanism of Action of Plan B,” *National Catholic Bioethics Quarterly* 13/4 (2013): 1-40; Christopher Kahleborn, Rebecca Peck, and Walter Severs, “Mechanism of Action of Levonorgestrel Emergency Contraception,” *The Linacre Quarterly* 82/1 (2015): 18-33; Rebecca Peck, Walter Rella, Julio Tudela, Justo Aznar, and Bruno Mozzanega, “Does Levonorgestrel Emergency Contraception Have a Post-fertilization Effect? A Review of Its Mechanism of Action,” *The Linacre Quarterly* 83/1 (2016): 35-51; Sanaz Ghazal, Jennifer Makarov, Christopher DeJonge, and Pasquale Patrizio, “Egg Transport and Fertilization” (2014), available at [http://www.glowm.com/section_view/heading/Egg Transport and Fertilization/item/316](http://www.glowm.com/section_view/heading/Egg%20Transport%20and%20Fertilization/item/316); Jennifer Kulp and Kurt Barnhart, “Ectopic Pregnancy: Diagnosis and Management,” *Women’s Health* 4/1 (2008): 79-87.

³ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. at ____, 134 S.Ct. at 2775.

⁴ A discussion of material and formal cooperation is provided in an *amici curiae* brief submitted by fifty Catholic theologians and ethicists in *Kubik v. Burwell*, <http://www.scotusblog.com/wp-content/uploads/2016/01/50-Catholic-Theologians-and-Ethicists1.pdf>. While not concluding that cooperation with the HHS mandate is impermissible material or formal cooperation, the brief maintains that the Catholic petitioners challenging the mandate may reach such a conclusion in view of the Catholic teaching on the topic.

of researchers and commentators has yielded valuable insights and has thoroughly undermined prior claims of moral and/or scientific certitude about the MOA of Plan B. Making critical distinctions, recent analysis from multiple sources has presented the scientifically sound case for a potential postfertilization MOA that explains the absence of pregnancy in Noé.¹ While resistance to the obvious has been entrenched, this much is certain: the Catholic tradition of moral analysis and doubt, properly applied, prohibits the unrestricted administration of EC, including Plan B, as currently mandated in Connecticut law and practiced in Connecticut's Catholic hospitals.²

In 2007 the Connecticut bishops were advised by constitutional law experts that every possible legal challenge to the mandate had been vetted and found wanting. But RAFA and its Connecticut analog set barriers to religious oppression higher than that required by current constitutional jurisprudence. Given the holding in *Hobby Lobby*, the emergence of the Noé data, and the promise to revisit "reluctant compliance" should conditions warrant, a challenge to the mandate should be reconsidered, either by affirmative litigation or by adoption of a nonconforming protocol, in which case Connecticut's Act Concerning Religious Freedom (ACRF) may be asserted as a defense to any enforcement action brought by the state.³

Because knowledge about the circumstances attendant to the adoption of the EC mandate in Connecticut is so plentiful and because the Connecticut bishops' explanation of the policy of "reluctant compliance" offers an extraordinary segue into the MOA issue, they have been given special attention herein. What follows is a discussion of the statutory protection of religious free exercise supported by

¹ Bruno Mozzanega and Erich Cosmi, "How Do Levonorgestrel-only Emergency Contraceptive Pills Prevent Pregnancy? Some Considerations," *Gynecological Endocrinology* 27/6 (2011): 439-42; Rebecca Peck, Rebecca, Walter Rella, Julio Tudela, Justo Aznar, and Bruno Mozzanega, "Does Levonorgestrel Emergency Contraception Have a Post-fertilization Effect? A Review of Its Mechanism of Action," *The Linacre Quarterly* 82 (2015): 197-202; Rebecca Peck and Juan Velez, "The Postovulatory Mechanism of Action of Plan B: A Review of the Scientific Literature," *National Catholic Bioethics Quarterly* 13/4 (2013): 1-40; Christopher Kahlenborn, Rebecca Peck, and Walter Severs, "Mechanism of Action of Levonorgestrel Emergency Contraception," *The Linacre Quarterly* 82/1 (2015): 18-33; Kathleen Ravielle, "Levonorgestrel in Cases of Rape: How Does It Work?" *The Linacre Quarterly* 81/2 (2014): 117-29 (2014).

² Thomas Davis, "Evaluation of the Mechanism of Action of Anti-fertility Treatment in Cases of Sexual Assault: Moral Certitude and Human Acts"; Thomas Davis et al., "Levonorgestrel and Moral Certitude," *National Catholic Bioethics Quar.* 15/1 (2015): 5-8.

³ Conn. Gen. Stat. 52-571b(c) provides, "A person whose exercise of religion has been burdened in violation of the provisions of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the state or any political subdivision of the state."

RAFA and the Connecticut's ACRF and how such protection may apply to the Connecticut EC mandate. The analysis applies with equal vigor to other states with both a RAFA analog and an EC mandate, such as South Carolina and New Mexico. It would similarly apply to the proposed federal "Compassionate Assistance for Rape Emergencies Act."¹ While the discussion is concerned with statutory strict scrutiny applied to free exercise, other infirmities of constitutional magnitude are implicated by EC mandates including troubling free speech and association issues and are briefly addressed.

RAFA, Hobby Lobby, and ACRF

In order to understand the force of a challenge to the EC mandate supported by the rationale of *Hobby Lobby*, it is necessary to review the history of Supreme Court jurisprudence related to the free exercise clause of the First Amendment and the Congressional response through RAFA. Justice Alito's majority opinion in *Hobby Lobby* provides a succinct yet through history:

Congress enacted RFRA in 1993 in order to provide very broad protection for religious liberty. RFRA's enactment came three years after this Court's decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, which largely repudiated the method of analyzing free-exercise claims that had been used in cases like *Sherbert v. Verner*, and *Wisconsin v. Yoder*. In determining whether challenged government actions violated the Free Exercise Clause of the First Amendment, those decisions used a balancing test that took into account whether the challenged action imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest.

In *Smith*, however, the Court rejected "the balancing test set forth in *Sherbert*." *Smith* concerned two members of the Native American Church who were fired for ingesting peyote for sacramental purposes. When they sought unemployment benefits, the State of Oregon rejected their claims on the ground that consumption of peyote was a crime, but the Oregon Supreme Court, applying the *Sherbert* test, held that the denial of benefits violated the Free Exercise Clause.

This Court then reversed, observing that use of the *Sherbert* test whenever a person objected on religious grounds to the enforcement of a generally applicable law "would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind." The Court therefore held that, under the First Amendment, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest."

Congress responded to *Smith* by enacting RFRA. "[L]aws [that are] 'neutral' toward religion," Congress found, "may burden religious exercise as surely as laws intended to interfere with religious exercise." In order to ensure broad protection for religious liberty, RFRA provides that "Government shall not substantially burden a person's exercise of

¹ "Compassionate Assistance for Rape Emergencies Act" was proposed in 2009 in the 111th Congress as H.R. 1236, and is available at <https://www.congress.gov/bill/111th-congress/house-bill/1236/text>.

religion even if the burden results from a rule of general applicability.” If the Government substantially burdens a person’s exercise of religion, under the Act that person is entitled to an exemption from the rule unless the Government “demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”¹

The development of statutory free exercise protection did not end there. Subsequent case law, recognizing limits on congressional power, restricted application of RFRA to federal action, thereby freeing states from the strict scrutiny standard of REFA. Once again, the majority opinion in *Hobby Lobby* developed the ongoing history:

As enacted in 1993, RFRA applied to both the Federal Government and the States.... [I]n attempting to regulate the States and their subdivisions, Congress relied on its power under Section 5 of the Fourteenth Amendment to enforce the First Amendment. In *City of Boerne*, however, we held that Congress had overstepped its Section 5 authority because “[t]he stringent test RFRA demands” “far exceed[ed] any pattern or practice of unconstitutional conduct under the Free Exercise Clause as interpreted in *Smith*.”

Following our decision in *City of Boerne*, Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). That statute, enacted under Congress’s Commerce and Spending Clause powers, imposes the same general test as RFRA but on a more limited category of governmental actions. And, what is most relevant for present purposes, RLUIPA amended RFRA’s definition of the “exercise of religion.” (importing RLUIPA definition). Before RLUIPA, RFRA’s definition made reference to the First Amendment (defining “exercise of religion” as “the exercise of religion under the First Amendment”). In RLUIPA, in an obvious effort to effect a complete separation from First Amendment case law, Congress deleted the reference to the First Amendment and defined the “exercise of religion” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” And Congress mandated that this concept “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.”²

The initial congressional response to *Smith* and its post *City of Boerne* amendment of RAFA’s definition of “exercise of religion” were seismic. The aftershocks rippled through state legislatures as well. Today, nearly half of the states have adopted some versions of RAFA. The legislative history of the Connecticut statute and subsequent case law has amplified various aspects of the statute while its full force is yet to be clarified. Of immediate note is the clear language equating “exercise of religion” under the state act with the meaning of the same expression in “section 3 of article first of the Constitution of the state.” Thus, while exercise of religion under RAFA, as amended by RLUIPA, is not

¹ 573 US at ___, 134 S.Ct. 2751, 2760-2761 (2014)(citations omitted).

² 573 US at ___, 134 S.Ct. 2751 at 2761-2762 (citations omitted).

necessarily limited to First Amendment meaning, Connecticut's legislative extension of strict scrutiny to restrictions on religious free exercise is anchored in the state constitutional understanding of the term. With that distinction in mind, a review of the case law in Connecticut is enlightening.

In *Rweyemamu v. Commission on Human Rights and Opportunities*¹ the Connecticut Appellate Court recognized that

the overarching purpose of [ACRF] was to provide more protection for religious freedom under Connecticut law than the *Smith* decision would provide under federal law.... The legislature illustrated its intent to reverse the effects of the *Smith* case by considering a number of specific situations in which its application would lead to the decreased protection of religious freedoms.²

The Court held that §52-571b adopted “the strict scrutiny test” and that the legislature intended protection for religious practices beyond that mandated by the First Amendment “such as the ritualistic use of peyote at issue in *Smith*.... The legislative history is replete with examples of religious practices that the legislature intended to protect under [the] strict scrutiny test.”³ The Court cited examples from legislative hearings including “lighting of candles in church, the receiving of wine at holy communion, and wearing a yarmulke in court.” Those references were in response to concerns that neutral laws of general applicability, such as fire codes and minimum-age alcohol-consumption laws, could suppress established religious practices that may not be protected by the constitutional analysis adopted in *Smith*. Other examples included Amish in Minnesota who were compelled to place reflectors on their horse drawn buggies, something that violated their religious practice of shunning forms of adornment. In Michigan, the body of a Jewish man killed in an automobile accident was subjected to an autopsy despite the fact that his religious beliefs barred the procedure and his family had objected.⁴ The examples point out that government regulation of licensed activities affecting public health or safety, normally subject to the rational relationship test, will be subjected to strict scrutiny where they burden the “exercise of religion” as that term is used in the statute.

In *Outlaw v. Warden* a state court judge found a compelling government interest advanced by the least restrictive means where the state correctional department refused to adopt an inmate's name change from “Vaughn Daryl

¹ 98 Conn. App. 646 (2006).

² *Ibid.* at 660-61.

³ *Ibid.* at 664.

⁴ Testimony of Robert Leikind before Connecticut Judiciary Committee, Bill No. SB 1343, Public Hearing March 1, 1993, transcript 1993JUD00301 R001500 CHR.HTM available at <http://www.cga.ct.gov/>.

Outlaw” to “Alhizquiyalishmawiyl Ibrahim Rabbial Hiramramzideen.”¹ The significance of the decision is not mitigated by the *pro se* status of the plaintiff since the court correctly identified and then applied, if parsimoniously, the heightened strict scrutiny mandated by the act.

*First Church of Christ, Scientist v. Historic District Commission of the Town of Ridgefield*² is a clear anomaly. While upholding religiously neutral historical district land use regulations that had a secular purpose, the appellate court referred to the state religious liberty act in its description of the plaintiff’s claims but then adopted the trial court opinion that relied exclusively on the First Amendment analysis in *Smith*. Notably absent was application of the strict scrutiny test.³

In *Ventura v. Connecticut Department of Corrections*,⁴ another inmate case, the court denied a motion to dismiss a statutory free exercise claim that prison restrictions on preaching, teaching, and engaging in Christian fellowship in a common recreation day room violated the ACRF, especially in view of permitted secular activities such as playing chess and card games. An additional ACRF claim survived alleging denial of religious publications and the right to possess and privately use a bible in common areas where other inmates were permitted to possess and privately use secular materials.

In *Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission of the Town of Newtown* the Connecticut Supreme Court soundly rejected the notion that ACRF benefits only natural persons or individuals and applied it to religious organizations, holding that it restored the balancing test rejected in *Smith*.⁵ As applied to the EC mandate, the case establishes that institutional healthcare providers, such as Catholic hospitals and licensed outpatient clinics, have standing to pursue a ACRF challenge. The court also held that ACRF did not expressly define “exercise of religion” thereby necessitating resort to legislative history and historical context to determine its meaning, which it concluded did not reach religious uses such as building a place of worship. Citing the same examples of protected activity in the legislative record that the Appellate Court identified in *Rweyemamu*, it held that “the application of land use restrictions that are intended to protect public health and safety” are not subject to the strict scrutiny of ACRF. But the case cannot stand for the proposition that

¹ *Outlaw v. Warden*, 2001 WL 418561 (Superior Court, March 30, 2001).

² *First Church of Christ, Scientist v. Historic District Commission of the Town of Ridgefield*, 55 Conn. App. 59 (1999).

³ The lower court opinion is at 46 Conn. Supp. 90 (1998).

⁴ *Ventura v. Connecticut Department of Corrections* 2004 WL 3049086 (Superior Court, 2004).

⁵ *Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission of the Town of Newtown*, 285 Conn 381 (2008).

public health and safety laws are exempt from the act. The legislative history contains specific examples of health and safety laws targeted by the act including the use of peyote at issue in *Smith* and a Minnesota law requiring reflectors on horse drawn buggies, both health and safety laws that invaded religious exercise of by native american adherents in the former and Amish in the latter. Even the concerns expressed about potential limits on lighting candles in church or the reception of communion wine would necessarily invoke state health and safety police powers. Rather, *Cambodian Buddhist Society* must be limited to the land use regulatory scheme at issue in the case.

One United States District Court decision is especially significant. In *Murphy v. Zoning Commission of the Town of New Milford*,¹ homeowners claimed that a local ordinance and the town's zoning enforcement officer's "cease and desist order" prohibiting prayer meetings of more than twenty-five people in residential homes violated ACRF. The court agreed. The decision, reversed on unrelated grounds that do not disturb its statutory analysis,² carries substantial intellectual weight. The court held that the zoning rule failed strict scrutiny analysis. While it advanced a "compelling government interest" in traffic and safety it did not advance that interest by the least restrictive means,³ a defect artfully exposed by the court's analysis:

[T]he Cease and Desist Order proscribes more religious conduct than necessary to achieve defendants' stated ends.... [D]efendants' stated concerns in limiting the size of plaintiffs' meetings were traffic and safety issues centered around the number of vehicles parked in the street. However, the Cease and Desist Order limits only the number of *people* permitted to attend the meetings. If, for example, the ZEO identified problems related to the parking of more than twenty cars on the street and at plaintiffs' home, and plaintiffs were willing to arrange for car pools or shuttles to reduce the number of vehicles, their meetings would still be unlawful as long as the number of unrelated people exceeded twenty-five even if they were all dropped off by a bus. Therefore, the Cease and Desist Order proscribes more religious conduct than is necessary to achieve defendants' stated ends.⁴

"The least-restrictive-means standard is exceptionally demanding," and it requires the government to "sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by

¹ *Murphy v. Zoning Commission of the Town of New Milford*, 289 F. Supp. 2d 87 (D. Conn. 2003).

² The United States Court of Appeals for the Second Circuit held that the homeowners claim was not ripe for adjudication. See 402 F. 3d 342 (2d Cir. 2005).

³ In addition, the court held that Connecticut's statute prohibited "burden" of religious exercise and not the elevated standard of "substantial burden" set forth in the federal RFRA. *Id.* at 115.

⁴ 289 F. Supp. 2d at 105 (citations omitted).

the objecting part[y].”¹ “[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.”² When applied to Connecticut’s ACRF, it requires a showing by the state that it lacks other means of achieving its desired goal without imposing *any* burden on the exercise of religion. As observed by the court in *Murphy*, ACRF prohibits any “burden” of religious exercise and not the elevated standard of “substantial burden” set forth in the federal RFRA.³ This distinction between “burden” and “substantial burden” is itself substantial and portends advantage in litigation over the Connecticut EC mandate. “Substantial burden” has been explained in various ways by the courts. *Thomas v. Review Bd. Of the Indiana Employment Sec. Div.* held that a substantial burden exists where the “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.”⁴ *Sherbert v. Verner* held that a substantial burden arises when a person is required to “choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning the precepts of her religion...on the other.”⁵ “Substantial burden” must be more than an inconvenience.⁶ In order to satisfy the standard, “the government must either compel a person do something in contravention of their religious beliefs or require them to refrain from doing something required by their religious beliefs.”⁷ The strikingly different language in Connecticut requiring only a “burden” rather than a “substantial burden” will be easily satisfied in an ACRF challenge.⁸

¹ *Hobby Lobby*, 134 S.Ct., at 2780.

² *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 815, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000).

³ 289 F. Supp. 2d 87, 115. Of interest is a recent ruling in *Gawlik v. Semple*, Memorandum of Decision, No. NNH-CV-16-5036776-S, (J.D. New Haven, Aug. 31, 2018), wherein the court determined that prison policies limiting access to used books and other noncommissary items did not “impose any material burden on plaintiff’s ‘religious exercise’ within the meaning of” ACRF. *Ibid* at 39. It is unclear what the term “material burden” means in the context of the decision. If it merely references a burden unrelated to religious exercise, as one reading suggests, it is insignificant to the analysis of the level of burden required by ACRF, even if it erroneously dismisses certain acts as not constituting “religious exercise.” If, however, it portends an interpretive gloss on the statutory term “burden,” elevating it above its plain meaning to something more akin to that required by RFRA or RLUIPA, it represents a serious judicial intervention in a legislative prerogative. The matter may be magnified by the fact that the author, Steven Ecker, who presided at trial as a Superior Court judge is now an associate justice of the state Supreme Court.

⁴ 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981).

⁵ 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963).

⁶ *Hicks v. Garner*, 69 F.3d 22, n.22 (5th Cir. 1995).

⁷ *Ibid*.

⁸ Even if the “substantial burden” standard applied, as it would in South Carolina or New Mexico—or should the proposed federal EC mandate ever become law—*Hobby Lobby* teaches that it would be met if challenged by religious objectors.

Assertions of compelling government interest will be subjected to perustration and broadly formulated expressions will generally be insufficient. In *Holt v. Hobbs*, the Supreme Court was demanding.¹ An inmate desired to grow a beard as an expression religious faith, but prison regulation prohibited facial hair. A compelling government interest in safety and security was asserted.

The Department argues that its grooming policy represents the least restrictive means of furthering a broadly formulated...compelling interest in prison safety and security. But RLUIPA, like RFRA, contemplates a more focused inquiry and requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of religion is being substantially burdened. RLUIPA requires us to scrutinize the asserted harm of granting specific exemptions to particular religious claimants’ and to look to the marginal interest in enforcing the challenged government action in that particular context.²

With respect to the EC mandate, a challenge would assert that each of Connecticut’s Catholic hospitals are within short distance of a secular hospital that can provide EC without imposing on the religious identity and mission the Catholic institutions.³ The driving distance between the Catholic hospitals and their secular counterparts are 2.7, 1.5, and 2.4 miles.⁴ Ambulance transport between the facilities would provide a less restrictive alternative. In fact, the Catholic hospitals offered to arrange such transposition in their legislative testimony in 2007. Subsequently, Plan B One-Step has become prescription free,⁵ and its administration requires no specialized knowledge. Ambulance crews could easily provide any desired access, as could a receiving secular hospital.

In *Holt* the court also found it significant that various other states and the federal government run prisons without the restrictions on beards:

[T]he Department failed to show, in the face of petitioner’s evidence, why the vast majority

¹ *Holt v. Hobbs*, 574 U.S. ____, 135 S.Ct. 853 (2015) applied The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc, *et seq.*, and its strict scrutiny test.

² 574 U.S. ____, 135 S.Ct. at 863 (2015).

³ When the EC standard of care was proposed in 2006 Connecticut’s senior U.S. senator at the time, Joseph Lieberman, recognized the proximity of other hospitals and supported Catholic hospitals’ objection to the mandate: “In Connecticut, it shouldn’t take more than a short ride to get to another hospital.” Although the report of Senator Lieberman’s comments published in the *New Haven Register* is no longer available from that source, other sources provide the information. The sarcastic and thoroughly antagonistic “Connecticut Bob” site at <http://ctbob.blogspot.com/2006/05/lieberman-vs-day-after-pill.html> also reported the story.

⁴ *Ibid.*

⁵ <http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm358082.htm>.

of States and the Federal Government permit inmates to grow ½ inch beards, either for any reason or for religious reasons, but it cannot.... While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.¹

Several states with sexual assault EC treatment legislation only require provision of accurate information about EC but not the drug itself.² That suggests those states' interest were adequately met by educating victims who could pursue EC if they so desired. Other states provide specific exemption from a generally applicable EC mandate on the basis of religious or moral objection tied to referral or transport to a willing provider.³ *Holt* held that “when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course.” A similar burden must be carried by states that mandate EC administration, especially in light of the nonprescription status of Plan B One-Step. When a plausible, less restrictive alternative is offered it is the government's obligation to prove that the alternative will be ineffective to achieve its goals. One obvious alternative means to achieving any putative compelling state interest would be state owned or licensed primary care delivery platforms in portable units maintained immediately adjacent to the Catholic hospitals.

The Connecticut statute targets all “licensed health care facilities” that examine or treat rape victims,⁴ but not the typical private physician's office.

¹ *Holt v. Hobbs*, 135 S.Ct. at ___, (internal quotation marks omitted).

² For example, Colorado, Illinois, Oregon, and Texas. See Colo. Rev. Stat. § 25-3-110 (2007); Ill. Rev. Stat. ch. 410, § 70/1a et seq. (2002, 2008); Or. Rev. Stat. § 435.250, § 435.252, § 435.254 and § 435.456 (2007); Tex. Health and Safety Code Ann. § 323.005.

³ For example, Pennsylvania and Ohio: Pa. Code tit. 28 § 117.53, § 117.55 and § 117.57; Ohio Rev. Code Ann. §2907.29, which requires hospitals offering emergency services “to provide survivors of sexual assault with information on available venereal disease, pregnancy, medical and psychiatric services and directs the state's public health council to establish procedures for gathering evidence for victims of sexual offenses. The council created the *Ohio Protocol for Sexual Assault Forensic and Medical Exams*, which requires medical personnel to discuss and offer options for emergency contraception with survivors of sexual assault.” See <http://www.ncsl.org/research/health/emergency-contraception-state-laws.aspx>.

⁴ Licensed healthcare facilities include hospitals, outpatient clinics, mobile care units, and even school-based clinics. Several such entities are closely associated with the Catholic Church including the state's three Catholic hospitals, and the mobile outpatient clinic Malta House of Care, which is operated by the catholic organization Knights and Dames of the Order of Malta at various Catholic parishes, are a few examples. If licensed by the state of Connecticut, the health centers at Fairfield University, (“a Jesuit and Catholic university”), St. Vincent's College (“a community-based college, faithful to the teachings of the Catholic Church”), and Sacred Heart University (“a Catholic university”) would also be subject to the EC mandate.

Reliable data reveals that less than one-quarter of all rapes and sexual assaults are reported to police,¹ which suggests that the vast majority of victims seek anonymity. While the percentage of rape victims seeking care from private physicians is unknown, any reasonable assessment should conclude that they are the initial point of contact in the examination or treatment of a substantial number of rape victims. Limiting the EC mandate to “licensed health care facilities” constitutes an underinclusive classification. And that can only mean that the state’s putative compelling interest is not universal, admits to broad exception, and suggests ample room for religious accommodation that would not undermine whatever compelling interest is actually advanced by the act. The recent Second Circuit decision in *Williams v. Annucci*² held that the least restrictive means prong of the parallel RLUIPA statutory strict scrutiny test places the burden on the government to make the “difficult showing” that an underinclusive policy classification is the least restrictive means of furthering a compelling government interest. Successfully meeting that burden is unlikely because underinclusiveness itself suggests a more tailored policy, less burdensome to religious adherents, is possible.³

The Connecticut bishops opposed the mandate because it required administration of EC in circumstances where it *may* prevent implantation. Their opposition was grounded in the statutory preclusion of ovulation testing which they favored as a means to greater assurance that an abortifacient effect would not be operative. In the case of rape, healthcare directives for Catholic facilities permit treatment to prevent conception. However, they expressly prohibit treatments that have as their purpose or direct effect the interference with implantation. Directive 36 provides:

If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.

In 2007 the debate over testing assumed that Plan B was primarily an anovulant. The revolution overturning that presumption may suggest that negative ovulation testing cannot provide sufficient assurance precluding a post fertilization MOA and an outright ban on Plan B administration may yet emerge as the dominate

¹ United States Department of Justice, *Criminal Victimization, 2016*, at 7, table 5, available at <https://www.bjs.gov/content/pub/pdf/cv16.pdf>.

² 895 F.3d 180 (2d Cir. 2018).

³ *Ibid.* at 193.

catholic position.¹ Regardless, any scientifically valid analysis can no longer ignore the abortifacient potential given the normalcy of ovulation with LNG uptake, a potential that can no longer be ignored in application of ERD 36.

Given the legislative history of §52-571b and the related case law, a challenge to the EC mandate must be judged as having a reasonable chance of success. The elements of a successful action are present. Catholic hospitals in Connecticut are religion-based institutions. The mission of St. Vincent's Medical Center (Bridgeport, CT) "is to continue Christ's healing ministry," and is "[r]ooted in the loving ministry of Jesus the healer." It proclaims "Our Catholic health ministry is dedicated to spiritually-centered, holistic care" and prominently declares that "All facets of healthcare at St. Vincent's, from the stages of conception to natural death, are guided by the Ethical and Religious Directives for Catholic Health Care Services [ERDs] set forth by the National Council of Catholic Bishops."² St. Francis Hospital and Medical Center (Hartford, CT) is "the largest Catholic hospital in New England."³ St. Francis, St. Mary's Hospital (Waterbury, CT), and Johnson Memorial Hospital (Enfield, CT), are members of Trinity Health Of New England, itself a member of Trinity Health, a national Catholic health care system of 94 hospitals and over 100 continuing care, home care, and outpatient centers. It is sponsored by Catholic Health Ministries (CHM), "an entity established by the Catholic Church to oversee the healing ministry and Catholic identity of Trinity Health."⁴ Its purpose "is to further the healing ministry of Jesus in the Church" and recognizes that the "theological core" of "Catholic health ministry is a manifestation of God's love in communion with others."⁵ Its mission is to serve "in the spirit of the Gospel as a compassionate and transforming healing presence within our communities."⁶ It proudly proclaims that "Health care ethics ensures that policies and practices from patient care to boardroom decisions reflect our Core Values and Catholic moral tradition."⁷

¹ Other protocols suggest LNG may be used after certain ultrasound examination of leading follicle diameter and endometrium thickness, LH testing, and examination of cervical mucus. See Johannes Bonelli et al., "Empfehlungen zur Handhabung der Notfallkontrazeption ('Pille danach') bei Frauen nach einer Vergewaltigung (Recommendations for handling of emergency contraception ['morning after pill'] in women after being raped)," *Imago Hominis* 21, no. 1 (2014):68-72, available in German at www.imabe.org/index.php?id=2049.

² St. Vincent's mission statement available at <https://www.stvincents.org/About/mission-values-vision>.

³ <http://www.stfranciscare.org/about-us-370>

⁴ <http://www.trinity-health.org/our-sponsor>.

⁵ <http://www.trinity-health.org/our-sponsor>.

⁶ <http://www.trinity-health.org/mission-values>.

⁷ <http://www.trinity-health.org/mission-integration>.

Trinity Health declares that the ERDs “provide official church guidance and teachings on issues that are central to Trinity Health as a Catholic health care ministry.”¹ The general introduction to the ERDs further demonstrates the religious nature of Catholic healthcare ministry and its relationship to episcopal authority charged with the duty to preserve its moral and religious identity.² The ERDs are replete with references to Jesus’ healing ministry and plainly state that healthcare and healing are a core element of Christianity. The provision of medication that may impede implantation of fertilized ova clearly implicates questions of faith and morals in Catholic teaching. While the Church has not issued a definitive teaching, the bishops of Connecticut in 2007 repeatedly voiced their objection to compulsory EC distribution in rape cases without adequate testing and only agreed to “reluctant compliance.”

Compelled Speech, Falsity, and Loaded Dice

Other infirmities with Connecticut’s mandate warrant mention. It compels speech that invades the patient–physician relationship and, potentially, the First Amendment and substantive due process. It requires disclosure of “medically and factually accurate and objective information relating to emergency contraception” to rape victims.³ Requiring accurate information obviously furthers a legitimate government interest, but the mandate does more. It defines “[m]edically and factually accurate and objective” as “verified or supported by the weight of research conducted in compliance with accepted scientific methods and published in peer-reviewed journals, where applicable.”⁴ It is now well established that the “weight of research” appearing in peer-reviewed journals has long inaccurately reported the primary mechanism of LNG. Many of the leading articles forming the “weight of research” deny any interceptive or contragestative MOA, reflecting bias, manipulation of data, internally inconsistent conclusions, and avoidance of

¹ <https://www.trinity-health.org/documents/codeofconduct.pdf>.

² ERDs, General Introduction, provides: “The Church has always sought to embody our Savior’s concern for the sick. The gospel accounts of Jesus’ ministry draw special attention to his acts of healing.... Indeed, the Gospels are replete with examples of how the Lord cured every kind of ailment and disease (Mt 9: 35).... The mystery of Christ casts light on every facet of Catholic health care: to see Christian love as the animating principle of health care; to see healing and compassion as a continuation of Christ’s mission; to see suffering as a participation in the redemptive power of Christ’s passion, death, and resurrection; and to see death, transformed by the resurrection, as an opportunity for a final act of communion with Christ.... Catholic health care expresses the healing ministry of Christ in a specific way within the local church. Here the diocesan bishop...ensures the moral and religious identity of the health care ministry in whatever setting it is carried out in the diocese.”

³ Conn. Gen. Stat. 19a-112e(b)(1).

⁴ 19a-112e(a)(3).

obvious inferences. Core elements of the previous dogma regarding MOA have been demolished and prominent EC researchers now acknowledge that when administered in the preovulatory fertile window it is no more effective at preventing ovulation than a placebo.¹ The restrictions on the sources and substance of “factually accurate and objective information relating to emergency contraception” jeopardize meaningful informed consent.

Some states go even further and grant a monopoly on the content of information provided to a patient. Minnesota requires provision of “factually accurate and unbiased written and oral medical information about emergency contraception from the American College of Obstetricians and Gynecologists” (ACOG). But ACOG is not an unbiased actor. Its current patient disclosure regarding EC fails to identify the potential post fertilization MOA that is recognized by the FDA.² Further analysis of these additional weighty issues warrants their own in-depth analysis. Mention here is offered to expose the breadth of issues implicated by legislative healthcare mandates that fail to respect religious liberty, target religious objectors—as was so plainly obvious in Washington state’s pharmacy rule—and impose politically driven but scientifically false content into the relationship between patient and physician.

Application of Connecticut’s ACRF to the EC mandate has long been proposed.³ It remains one of the great ironies of the religious liberty battles of recent years that the only religious institutional opposition to ACRF came from the Church in Connecticut.⁴ At the 1993 public hearing on the bill an attorney

¹ Vivian Brache, Leila Cochon, Maeva Deniaud, and Horacio B. Croxatto, “Ulipristal acetate prevents ovulation more effectively than Levonorgestrel: analysis of pooled data from three randomized trials of emergency contraception regimens,” *Contraception* 88 (2013): 611-18.

² <http://www.acog.org/Patients/FAQs/Emergency-Contraception#work>. And at least as disturbing is ACOG’s history of collaboration with Justice Elena Kagan when she was White House counsel in 1996 in the drafting of an ACOG statement in such a manner that it provided a misleading foundation for President Clinton’s veto of a federal partial birth abortion ban, a statement later used to manipulate the Supreme Court when it struck Nebraska’s partial birth abortion ban in *Stenberg v. Carhart*. The tawdry history of that episode is well documented in the *National Review* articles by Shannen Coffin, including the following: “Kagan’s Abortion Distortion,” available at <http://www.nationalreview.com/article/243362/kagans-abortion-distortion-shannen-w-coffin>; “Questioning Elena Kagan,” available at <http://www.nationalreview.com/corner/232608/questioning-elena-kagan-shannen-w-coffin>; and “More on Kagan and Partial Birth Abortion,” available at <http://www.nationalreview.com/corner/232619/more-kagan-and-partial-birth-abortion-shannen-w-coffin>.

³ Thomas Davis, “Plan B and the Rout of Religious Liberty,” *Ethics & Medics* (Dec. 2007).

⁴ See n48 above; Connecticut Judiciary Committee public hearing, March 1, 1993, transcript 1993JUD00301-R001500-CHR.HTM available at www.cga.ct.gov.

representing the Connecticut Catholic Conference specifically objected that it “would in effect be overturning the recent decisions of the United States Supreme Court in this area,” a clear reference to *Employment Div. v. Smith*. Ten pages of painful transcript has the witness questioned by bemused legislators, who were puzzled that the Catholic Church would oppose legislation designed to protect religious free exercise. Fortunately, the bill sailed through the legislature and stands as the most realistic remedy to the EC mandate. That faux pas, combined with their utter collapse of 2007, euphemistically deemed “reluctant compliance,” has sapped the credibility of Catholic healthcare and its guardians in the eyes of many. Moral courage may yet be salvaged through Justice Alito’s warning in *Stormans*, and his rationale in *Hobby Lobby* may prove to be the redemptive element in this discordant affair.

The “Our Father” Translation Controversy

*Joshua R. Brotherton**

ABSTRACT: Regardless of one’s opinion of the current Pontificate, one overlooked issue he has raised that is worth revisiting is the current vernacular translations of the “Our Father.” The original Greek text of Jesus’s prayer is particularly difficult to translate, at least, into Latin languages. Some instinctively want nothing so significant to be revised and others clamor every change that seems to “look forward.” Apart from such partisan reactions, I will examine how the text might be better translated into English, considering both linguistic and theological intelligibility. I conclude that the translation ought to be changed, but not precisely in the way that Pope Francis suggests.

IN A TELEVISION INTERVIEW late last year, Pope Francis alluded to the possibility of changing the vernacular translation of the Our Father prayer (or “Lord’s prayer”).¹ Beyond the misconception, perpetuated by some in the mass media, that the pope is proposing a change to the prayer itself, Anthony Esolen voiced some valid concerns about the potential move in a recent essay in *First Things*, in which he provides responses to common arguments offered in favor of what is sometimes called dynamic translation.² Regardless of potential differences of opinion with some of the present pontiff’s off-the-cuff remarks and reformatory efforts, a reasonable person familiar with the original Greek text of the prayer might think that the pope’s suggestion in this matter is not unjustified. I will propose, in contrast to Esolen’s approach, that the pope’s concerns with some vernacular translations are valid, even if the veritable remedy is different from the one he proposes.

Commenting on the Italian translation, which is the equivalent of the English

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¹ Available at <https://www.youtube.com/watch?v=U160Jb33pfM>.

² See Anthony Esolen, “Why We Shouldn’t Change the Lord’s Prayer,” in the online edition of *First Things* (December 11, 2017), available at <https://www.firstthings.com/web-exclusives/2017/12/why-we-shouldnt-change-the-lords-prayer>.

rendition (“lead us not into temptation”), the pope expressed preference for the French and Spanish translations of the prayer, which effectively ask the Father not to “let us fall into temptation.”¹ While the prayer was probably uttered originally in Aramaic by our Lord, the only written record of it appears in the Greek New Testament, identically in two places (see Mt 6; Lk 11). Esolen argues from the outset that the former translation, not the latter, is faithful to the Greek and thus no change ought to be considered:

The words of Jesus are clear. The original Greek is not ambiguous. There is no variant hiding in the shelves. We cannot go from an active verb, subjunctive mood, aorist tense, second person singular, with a clear direct object, to a wholly different verb—“do not allow”—completed by an infinitive that is nowhere in the text—“to fall”—without shifting from *translation* to theological exegesis.

But while Esolen is (mostly) correct about the verb, he does not address the difficulty of translating the object of the verb and the potential impact on the verb a better translation of the object might incur. The original Greek reads καὶ μὴ εἰσενέγκῃς ἡμῶς εἰς πειρασμόν. It does not take a polyglot to discern the adequacy of the translation of the verb here, εἰσενέγκῃς, as “lead into,” but it might take a superior linguist to explain precisely how a subjunctive aorist tense becomes an imperative—there is no English equivalent for the (former) Greek tense, but it is a past tense and, at the same time, invocative. Nonetheless, it is clear that the object of the verb, πειρασμός, is better translated as “trial, test, probation.”² Yet, how does one bring such a phrase (“lead us not into trial”) into English without excessive awkwardness?

Anyone sufficiently familiar with other languages, especially ancient languages, will vouch for the extraordinary difficulty of rendering just translations of some constructions into other (modern) languages that have completely different histories and, thus, distinct structures. A good example is the scriptural text in question (Mt 6:13; Lk 11:4): “And lead us not into temptation.” Often, the debate around translation centers on whether it is better to lean to the side of wooden literalness or meaningful liberality. In general, I agree that it is best to stick to the letter rather than attempt to insert an interpretive spirit into the text. Yet, in this case, resistance to imposing interpretation on texts in translation does not suffice as a solution to the question

¹ For a report about the interview in English, see, for instance, <https://www.nytimes.com/2017/12/08/world/europe/pope-francis-lords-prayer-translation-temptation.html>.

² For another brief linguistic analysis of this line in the prayer, see the comments of Thomas Stegman, S.J., in the report, “Pope Francis suggests translation change to the ‘Our Father,’” available at <https://www.americamagazine.org/faith/2017/12/08/pope-francis-suggests-translation-change-our-father>.

raised by the pope. The task of translation is not to render the text *relevant*, but to render it *intelligible* in another language, which although inevitably related to culture is not inextricable from the latter's peculiarities.

With this in mind, assuming the justification for the transformation of verb tense from aorist in Greek to imperative in the vernacular, one might argue that the best English rendering of the Greek line in question might be “lead us not into tribulation,” as “tribulation” in English is a cognate for “trial,” which carries unnecessary legal connotations.¹ The most literal translation of the subordinate clause that precedes the final clause of the prayer, “but deliver us from evil,” would be the past tense “led not into trial,” which functions as a qualifier in contrast to what is actually requested—that we be delivered from evil. But it is understandable why this was not chosen originally or being proposed presently, as it is a bit wooden. Thus, even though the verb tense is not participial in the original, I would tentatively propose that the intended meaning of the first clause is better translated “having not led us into....” Perhaps, then, the best translation overall would be “having not led us into tribulation, deliver us from evil.” This is not theological exegesis; it is linguistically attuned translation that also happens to be theologically informed.

Regardless of the translation, catechesis is necessary concerning the meaning. While the pope argues (correctly) that the French and Spanish translations are more theologically intelligible than the English and Italian, they are less faithful to the original Greek text insofar as the verb is clearly changed. But the English and Italian translations might be impugned as literalistic, that is, not considering the meaning of the whole when determining the precise rendering of the object of the verb. For this reason, they lend themselves to greater theological obscurity. The French and Spanish translations are more catechetical in orientation. I do not think there has to be a choice between fidelity to the letter and fidelity to the spirit, as it were. Rather, the letter and the spirit ought to be understood as inextricably united, like matter and form (in Aristotelian terminology).

Questions of pastoral philosophy aside, it is therefore good that the pope has called our attention, indirectly, to the complexities of translation and, directly, to the theological significance of varying interpretations. Despite the informality of the setting, which the present pontiff seems to prefer, it is crucial that translations remain faithful to the literal meaning, which is to say the

¹ Perhaps, this is why the International Commission on English in the Liturgy rejected the ecumenical translation of this prayer (“do not bring us into the time of trial”), crafted by the International Consultation on English Texts in 1975. See <https://adoremus.org/2006/10/15/quotEcumenical-Textsquot-in-the-Missal/>. I thank Michael Root for calling my attention to this eschatological translation, accepted into the Lutheran Book of Worship.

meaning intended by the words themselves employed in a given context.¹ Regarding the theological significance of the various translations (which are inevitably interpretive to some degree), the pope has not treated the subtleties of the theological question at issue, namely, whether God sometimes actively leads men into temptation, but numerous thinkers in the last century as diverse as Francisco Marin-Sola, O.P., Bernard Lonergan, S.J., William Most, and Jacques Maritain, *et altera*, have done so in slightly different ways.²

According to these and many other esteemed twentieth-century (primarily, Thomist) theologians, it would contradict the goodness of the omnipotent God to lead human beings into sin or to test them beyond their strength (see 1 Cor 10:13). Thus, if he wills that we not sin, which is always the case, God does not (at least, not ordinarily) create temptations for us. Yet, this does not necessarily mean that he would never create the conditions necessary for particular temptations to arise in the lives of human beings, whether with the purpose of testing the steadfastness of the faithful or with the purpose of humbling the arrogant or for any other honorable purpose. Strictly speaking, then, God does not (at least, directly) lead us into temptation, but he provides us guidance in the midst of temptations, whether or not he arranged the conditions necessary for the particular temptations one encounters.

Perhaps, changing the translation of the Our Father might help the faithful

¹ For guidelines concerning interpretation of scriptural text, see, for example, Peter S. Williamson, *Catholic Principles for Interpreting Scripture: A Study of the Pontifical Commission's 'The Interpretation of the Bible in the Church'* (Rome: Gregorian, 2001).

² See especially Francisco Marin-Sola, O.P., "El sistema tomista sobre la moción divina," *Ciencia Tomista* 32 (1925): 5-52; "Respuesta a algunas objeciones acerca del sistema tomista sobre la moción divina," *Ciencia Tomista* 33 (1926): 5-74; "Nuevas observaciones acerca del sistema tomista sobre la moción divina," *Ciencia Tomista* 33 (1926): 321-97; English: Michael Torre, *Do Not Resist the Spirit's Call: Francisco Marin-Sola on Sufficient Grace* (Washington, D.C.: Catholic Univ. of America Press, 2013), chap. 1; Jacques Maritain, *Dieu et la permission du mal* (Paris: Desclée de Brouwer, 1963); English: *God and the Permission of Evil*, trans. Joseph W. Evans (Milwaukee: Bruce, 1966); *St. Thomas and the Problem of Evil* (Milwaukee: The Aquinas Lectures, 1942); *Court traite de l'existence et de l'existant* (Paris: Paul Hartmann, 1947), chap. 4; English: *Existence and the Existent*, trans. Lewis Galantieri and Gerald B. Phelan (New York: Pantheon Books, 1948); Bernard J. F. Lonergan, S.J., *Works of Bernard Lonergan*, vol. 1, *Grace and Freedom: Operative Grace in the Thought of St. Thomas Aquinas*: ed. Frederick E. Crowe, S.J. and Robert M. Doran, S.J. (Toronto: University of Toronto, 2000). See also William Most, *Grace, Predestination, and the Salvific Will of God* (Front Royal, VA: Christendom Press, 1997); Charles Journet, S.J., *The Meaning of Grace*, trans. A. V. Littledale (New York: P. J. Kennedy & Sons, 1960) and *The Meaning of Evil*, trans. Michael Barry (New York: P. J. Kennedy & Sons, 1963); Michael Torre, *God's Permission of Sin: Negative or Conditioned Decree? A Defense of The Doctrine of Francisco Marin-Sola, O.P. Based on the Principles Of Thomas Aquinas* (Fribourg: Academic, 2009).

to learn that God never wills moral evil, neither as an end nor as a means. He permits evil, but the nature of such permission is obscure, and the petition, “lead us not into temptation,” leaves the former truth unclear. Nonetheless, there is nothing wrong with asking God not to do something that he does not do, just as it might sometimes be fitting to ask God to do what he already does, since the primary purpose of prayer is to align our desires with God’s, not vice versa.

Given the complexities of the issue, it should not be surprising that a better translation of the petition than both the English version and that proposed by the Holy Father (“let us not fall into temptation”) would perfect the conveyance of theological truth in the prayer. The drawback of the papal translation would be to emphasize request for the grace of not falling into temptation, which might be interpreted to mean that when we do fall into temptation, it is due to God not providing us with the necessary grace. God always provides us the grace not to fall into temptation, but we sometimes fall into it anyway by our own resistance to the divine will. Divine providence ultimately encompasses everything that occurs in time, but that does not mean God causes evil or that he directly wills occasions for moral evil or that sins result from a lack of grace. Again, it is perfectly permissible (and potentially beneficial) to ask God for something he already provides, namely, the grace to resist sin. Indeed, God wills that we receive such grace precisely through requesting it continuously, thus demonstrating our radical contingency. But it might be even more meaningful and more pertinent to the prayer as Jesus intended it – according to the letter of the text inspired by the Holy Spirit—to begin the petition for God “to deliver us from evil” with the laudatory proclamation that God does not directly will any occasion for moral evil, even though he may very well permit and/or contribute to tribulations that may in the end be necessary for us to attain the good he ultimately wills for us (namely, glory).

It is true that the sufferings—the trials and tribulations—we endure in life are encompassed by divine providence and sometimes necessary as means to an end, but it remains true too that God does not will evil, except insofar as not preventing evils and seeking to bring some good out of them may be considered “willing.” Rather, he wills to deliver us from evil through our petitions for such and through our lauds of his own infinite goodness. He is innocent of all evil committed and endured, even if he might sometimes permit that evils arise for some good purpose, but he does not arrange for those evils to occur, and yet he may utilize them to create occasions for good.

Whatever the translation finally promulgated, these are the issues at stake in the translation, and each option will have its own ramifications. Perhaps, then, the Church ought to focus on encouraging literacy as well as demonstrating it in its own attempts to clarify the intended meaning of ancient texts.

Bells and Whistles: The Technology of Forgetfulness

*Gil Bailie**

ABSTRACT: This presentation explores the attenuation of the sacramental sensibilities—on which a Catholic ecclesial, eucharistic, and liturgical way of life depends—using for illustration, *inter alia*, the controversy over church bells in post-revolutionary Russia. At stake was the nature of what one historian has called the “subtle auditory rhetoric” of cultural life and religious faith. This early twentieth-century contest will be seen as a “distant mirror” for better appreciating how “technologies of forgetfulness” are today compromising the sacramental understanding of reality and the providential understanding of history, without which the apostolic faith of Catholic Christianity cannot survive.

ROBERT FROST ONCE SAID that poetry is talking about one thing in terms of another. In what follows no one will accuse me of committing a poetic act, but I will be talking about one thing in terms of another. Specifically, I will be talking about the attenuation of the sacramental sensibilities that it has been the historical privilege and responsibility of Catholic Christianity to awaken. The vibrancy of Catholic faith largely depends on them. I will do so by reflecting on the contest over church bells in nineteenth- and twentieth-century Europe. The burden of these short reflections is well encapsulated by Mark McIntosh: “It is as if a particular language skill had been left to atrophy, and therefore a whole realm of life, custom, and reality for which this language was the medium has become lost.”¹

I have chosen to exemplify this predicament in relationship to church bells for the same reason that the French historian Alain Corbin undertook his exhaustive study of the controversy over church bells in nineteenth-century France. Corbin wanted, he wrote, “to study the *genesis of meaninglessness*, and ...the *evolution and diffusion of modes of incomprehension*.”²

In Andrei Tarkovsky’s 1966 cinematic tribute to the great Russian iconographer *Andrei Rublev*, a turning point for Rublev happens when he and the two other monks with whom he is wandering arrive at a village where preparations are under way to replace the bell in the village church tower. The old bell-maker has died, and his unproven son Boriska has inherited the formidable and precarious task of casting a new bell. “My father, the old snake,” Boriska complains, “didn’t pass on the secret. He died without telling me; he

took it to the grave. Skinflint scoundrel!”

Such is the justified lament of those whose forbears have neglected the task of cultural transmission. This lament should haunt those of us who, through no merit of our own, have been the beneficiaries of Christian truth, a gift we received from the imperfect but nonetheless earnest hands of our predecessors in the faith. Were we to fail to pass on this faith to those who come after us, or if we should pass on a lifeless replica of a once living faith, we will be as culpable as the old bell-maker.

Andrei Rublev, whose gift for iconography was already legendary among his fellow monks, had abandoned icon-writing and taken a vow of silence. He nevertheless saw his own vocational ambivalence mirrored in the young bell-maker's dilemma. Rublev watched silently as the drama of the bell casting unfolded. Under the pressure of social expectations and metallurgical uncertainties, the young Boriska supervised the digging of the pit, the selection of the clay, the shaping of the mold, the firing of the furnaces, the pouring of the molten bronze, and finally the hoisting of the bell into the tower. When the new bell rang perfectly at the consecration ceremony, the young, inexperienced bell-maker collapsed in tears. Rublev cradled the boy in his arms. Breaking his vow of silence, he said: “Let's go together. You'll cast bells. I'll paint icons.”

Tarkovsky's film makes it perfectly clear that fifteenth-century Russian Christianity was as sorely in need of theological instruction and catechesis, as most ages are. Under the circumstances, it might seem strange that a heart filled with faith and zeal would find the casting of church bells or the fashioning of icons to be the timeliest tasks to take up. Christianity, however, is not merely, and not primarily, a set of beliefs. It is a way of life—a participation in an ongoing historical drama—set in motion and finally determined by the life, death, and resurrection of Christ.

If Tarkovsky helps us appreciate the fact that church bells were themselves the result of technological skill, products of the practical arts, the philosopher and Roman Catholic priest Ivan Illich reminds us of the religious impulse out of which these technologies of remembrance arose:

The belief that technological devices can be intimately associated with the celebration of a Biblical religion is, arguably, one of the deep roots out of which the European attitude toward technology has grown.... Buildings and domestic animals, swords and plows, bridal beds and candles are among the innumerable things thus solemnly lifted into the sphere of faith. The blessing of the church bell is only one of these liturgies, albeit a very solemn one. *Its sound somehow creates the community around it.*³

We who have been cavalierly dismantling those things that foster our communal bonds need to awaken to how precious and delicate these bonds are. For, once

they are lost, violence is the default ruse for conjuring up crude facsimiles of social solidarity. The bonds that bind are so attenuated in our time that it is hard for us even to imagine the community-binding function that church bells played in an earlier age. Writes Alain Corbin:

The rural peals of the nineteenth century, which have become for us the sound of another time, were *listened to*, and evaluated according to a system of affects that is now lost to us. They bear witness to a different relation to the world and to the sacred as well as to a different way of being inscribed in time and space, and of experiencing time and space.... Bell ringing constituted a language and founded a system of communication that has gradually broken down. It gave rhythm to forgotten modes of relating between individuals and between the living and the dead. It made possible forms of expression, now lost to us, of rejoicing and conviviality.⁴

Those whose lives were lived according to the liturgical rhythm, for which the church bells served as the auditory cue, lived not just at another moment in time but within another *experience* of time. For them, time was not mere duration or chronology. Rather, it was punctuated with events that were more than merely passing, events that were historically past, liturgically present, and eschatologically future. Those who lived with this understanding were not marooned in the ever fleeting moment; for them the eternal broke into the merely chronological at regular intervals. As in prerevolutionary France, so in prerevolutionary rural Russia, the sound of the bell was, writes the historian Richard Hernandez, an “evocation of the eschaton,” a regular reminder to the members of the community of their place in a divinely ordered world.⁵ The bells summoned the villagers to prayer, to liturgical and other religious functions, alerted them to the death or birth or marriage of a villager.

Born in Vienna in 1926, Ivan Illich grew up at a time when the church bells retained their communicative function. “Their sound,” he wrote, “is part and parcel of each European place that I remember.” That Illich retained his ear for the subtle resonances of church bells throughout his life is suggested by an aside he made well into his seventh decade of life:

As I write this in a Mexican village, two bells are ringing. I know their names because I recognize their voices. I am surprised that today the Rosary will be said so late, and it takes me some time to figure out the reason. Like everyone else I hear the sound of the third tolling of the passing bell that lets me know that Don José is still breathing, and that we are all sharing in his last hour.⁶

Such was the mysterious role of bells in premodern and early modern Europe that revolutionary movements were not slow to recognize that the bells were incompatible with their effort of radical reconfiguration. Alain Corbin declared

the contest over church bells during the French revolution to have been an effort “designed to bring about a disenchantment of the world” by altering “the *temporal architecture of everyday life*.”⁷ Corbin notes:

The new policy was designed to bring about a disenchantment of the world, and it therefore has to do chiefly with the history of affectivity and with that of the culture of the senses.... The same logic underlay the decision to restrict religious services to the interior of churches, the destruction of crosses, the banning of processions, and the prohibition of bell ringing.⁸

A subsequent effort to expel Christianity’s cultural influence by eliminating the ensemble of choreographic cues occurred in Andre Rublev’s Russia in the early twentieth century. The Bolsheviks came to realize that the church bells in rural Russia were the cultural cornerstones of the worldview with which their revolution was incompatible. For both the Bolsheviks and the Russian peasants, writes the historian Richard Hernandez, “the bell symbolized the village’s older religious identity over and against Bolshevik attempts to reconfigure or destroy that identity.”⁹ By 1929, the patience of the Soviet central council in Moscow had run out; it declared church bells to be a counter-revolutionary instrument of resistance. The bells were to be confiscated, melted down for use in the industrialization of Soviet society.

Quoting Corbin, Hernandez describes how the Bolshevik ideologues planned to rid themselves of the bells and, in due course, the faith for which the bells served as the auditory evocation:

First, like their French revolutionary forebears, they attempted to “alter the prevailing pattern of the culture of the senses” by desacralizing the bell’s authoritative sounds and sacralizing a variety of substitutes. Second, Bolshevik activists coveted not only the mystique of the bell’s authority but also its constituent substance—its metal—for their dream of an industrialized society.¹⁰

In time, even the Bolsheviks came to understand that the bells themselves had to be “reconsecrated.” In his fascinating account of this episode in Soviet history, Hernandez reminds us that the name of the all-powerful Soviet premier of the day meant “man of steel,” and that the ideologues were not so maladroit as to miss the opportunity that this coincidence provided to exploit the campaign to confiscate the church bells for the purpose of reinforcing the personality cult surrounding Joseph Stalin: “Metal thus became an essential ingredient or sacred substance from which the most solemn Bolshevik dreams for society were to be incarnated. Acquiring metal for these dreams had, for many Bolshevik activists, the *élan* of a holy quest.”¹¹

The communists were clever enough to realize that an alternate auditory

cue would be necessary. Consequently, the regime began experimenting with alternatives. Chief among them was the factory whistle, which replaced the bells as the auditory reminder of the meaning of the temporal order. In addition, there were loud speakers and radios that had no on-and-off switches and that issued incessant party propaganda. Perhaps the most ludicrous Bolshevik assault on the senses were the “factory whistle symphonies” and “noise orchestras” to which the recalcitrant peasants were helplessly exposed. That noise could have been thought a worthy substitute for the pealing of church bells indicates how anthropologically tone-deaf the Bolsheviks were. For in fact the church bell is a kind of antinnoise. It is, writes John Senior, “the strike of silence,” for “in a noisy world it takes a striking sound within whose widening circles noise is hollowed out.”¹²

The bells *keep time* in that special sacramental sense of the phrase. They keep time from being flattened into mere chronology by punctuating temporality with an auditory reminder of a transcendent destiny. Once awakened, this hunger for transcendent meaning is not easily eliminated, and efforts to feed it on merely mundane visions of happiness lead almost ineluctably to violence on a massive scale. The Christian task today is to reawaken that hunger and reorient it toward its true object, and to do so, as T. S. Eliot would say, under conditions that seem quite unpropitious. For a glimmer of hope in this regard let me turn back to the nineteenth century.

Midway between the French and Russian revolutions something subtle but nonetheless quite significant occurred. In the summer of 1857, the French painter Jean-François Millet completed a painting he entitled *Prayer for the Potato Crop*. The painting depicts two peasants, a man and a woman, with heads bowed, hands folded in prayer, surrounded by a vast and furrowed landscape of dubious agricultural fecundity. It had been commissioned by Thomas Gold Appleton, a well-born, wealthy, and well-connected member of the Boston gentry of the day. Mr. Appleton, a man of Irish descent, surely chose this theme in light of the ravages of the Irish potato famine of 1845 to 1852. Appleton declined, however, to take possession of the painting, and Millet subsequently returned to it, adding a church tower on the distant horizon and changing the name of the painting to *The Angelus*, thus transforming the social realism of the original painting into the sacramental realism of the final one. Millet seems to have been grateful for the provocation and satisfied with the result. When his lifelong friend and agent Alfred Sensier first saw the painting on Millet’s easel, the artist asked: “Well, what do you think of it?” “It’s the Angelus,” acknowledged Sensier. To which Millet replied: “Can you hear the bells?”

Speaking of one thing in terms of another, this is our question. Can we hear the bells? Are we daily touched by subtle reminders of life’s brevity, meaning,

mystery, and grandeur?

“In Catholic Europe,” writes Hernandez, “the church bell daily called villagers to pray the Angelus prayer wherever they stood at a particular moment of the day.”¹³ To those whose religious sensibilities have been formed by long familiarity with this devotion and others like it in the repertoire of popular Catholic piety, this particular auditory cue fell across the routine activity of daily life, arresting it with a moment of unselfconscious and almost instinctive prayerfulness.

Many French Catholics living a half-century after the ravages of the Revolution in which church bells had been so fiercely contested were as quick to “hear the bells” as the artist’s friend had been. In its altered state, Millet’s painting was to become one of the most cherished artworks of the age, reproduced by some accounts more often than the *Mona Lisa*. Since only the second iteration of the painting came to the attention of a wider public, it is impossible to compare the relative popularity of the two versions. Nevertheless, it is safe to say that the original painting—similar in so many ways to other Millet paintings and other paintings of the time—would not have been met with the astonishing enthusiasm that was awakened by *The Angelus*. What might account for the popularity of the altered painting, which is perfectly indistinguishable from the original one except for two almost imperceptible details?

In both its original and its refashioned form, Millet’s painting is dominated by a foreground scene of peasant toil, hardship, and piety. In the original painting no less than in the later one, the uncovered head of the man and the folded hands of the woman indicate that they are at prayer. A peasant couple turning to prayer in the face of economic hardship is a poignant theme perhaps, but had not the church tower been added to the distant horizon and explicitly related to the foreground by the artist’s new title, neither the poignancy of humble hardship nor the piety of a couple burdened by it would likely have touched the nerve that the altered painting did. The artist’s comment—“Can you hear the bells?”—obviously suggests that it was his intention to make them visually audible, and both his friend’s response and the popularity of the painting indicate that he succeeded.

In the original painting two peasants facing material hardship are praying, quite obviously for divine help with their material difficulties, or perhaps asking for divine consolation. In the altered painting, on the contrary, the couple—their material plight unchanged from the original painting—have turned to prayer, but not in response to economic hardships. Their prayer has been prompted by an ecclesial tradition and not by fluctuations in their material fortunes. What comes to the fore in the altered painting is not poverty and piety but the gift of tradition, the moral dignity and beauty of those whose lives are ordered to the

rhythm of liturgical time. It is precisely this, I think, that endowed the painting with the peculiar power it came to have on the imagination of late nineteenth-century Europe.

On hearing the Angelus bells, the couple in Millet's painting promptly ceased their labors and bowed their heads in prayer, thereby subordinating themselves to a pattern of life not of their own making. Contrary to all our contemporary prejudices, therein lies their freedom and triumph over circumstance. We see them, not only in an act of prayer, but more remarkably still in an act of obedience. It is all the more gracious inasmuch as it took place almost instinctively upon hearing the Angelus bells. The painting is far more about the Church, its bells, and the ecclesial choreography of liturgical time than any material exigencies that might have been the immediate circumstances of the praying couple. The painting simply superimposes Augustine's two cities—the City of God and the Earthly City—at a moment when the former has revealed its primacy.

With a few strokes of his brush, Millet recommissioned his earlier painting, thereby awakening a largely inchoate longing for an ecclesial and liturgical way of life, the gradual disappearance of which few had been attentive enough to lament consciously. What Norman Rockwell did, for example, for mid-twentieth-century Protestant America, Millet did for mid-nineteenth-century Catholic Europe. There is a sense in Millet's painting, as in Rockwell's, of a vanishing world, of whose gradual disappearance the figures in the painting remain mercifully unaware, but of which countless admirers of these paintings were poignantly reminded.

"Tell me what you see vanishing," wrote the poet W. S. Merwin, "and I will tell you who you are." If what late-nineteenth-century Frenchmen saw vanishing in Millet's painting was the church bells and the unselfconscious piety they evoked, we are perhaps in position to see in the painting the attenuation of another of the gifts traceable to the Christian order of the world. For what ordered and deepened the spiritual lives of the couple in the painting enriched as well their nuptial relationship. For those attentive to these matters can detect the Trinitarian structure of that relationship. Their love for one another is not binary. Binary relationships are unstable and fraught with difficulties. Their love for one another is inseparable from the love they both have for something—or someone -- else: in this case, for everything represented by the church in the distance and the sound of the bells coming from its tower. This subtler innuendo of the painting might come more fully into focus in our time, as what we see vanishing is the Christian understanding of the nuptial mystery, dissolving under the influence of the same cultural and historical forces that conspired to replace the church bells with a cacophony of auditory cues antithetical to their purpose.

In the same year that the confiscation of church bells began in Russia, a young Spanish artist who had been haunted by Millet's *Angelus*, which had been a familiar fixture of his Catholic upbringing and schooling, encountered anew a reproduction of the painting. Salvador Dalí was so disquieted by it that he began to see the world through the lens of the painting, albeit in accord with his own surrealist and hallucinogenic frame of mind.

"The *Angelus* of Millet," Dalí wrote, "suddenly became for me the pictorial work which was the most troubling, the most enigmatic, the most dense and the richest in unconscious thoughts that I had ever seen."¹⁴ Dalí poured a vast amount of energy into mocking the painting over a period of more than three decades. He publicly admitted that the *Angelus* painting was the source of his greatest anguish.

In 1933 Dalí began his *The Architectonic Angelus of Millet*, in which the peasant couple of Millet's painting were replaced by two megalithic monstrosities, at least vaguely male and female—if only by virtue of the *Angelus* analogue—set against a garish and ominous sky. The website of the Dalí Museum observes: "Dalí paints the female slightly taller than the male, with her features resembling a praying mantis."

The church and its bell tower have been reduced to ruins that are now completely dwarfed by the two figures, who appear frozen in mocking postures of prayer. In the absence of the church tower whose bells called Millet's couple to a palpably humble and ecclesial act of prayer, the couple in Dalí's painting have themselves turned into lifeless monuments, cold and loveless to the point of indifference, dominating a landscape far more barren than the famine-blighted farmland in Millet's painting. The remnants of an abandoned church are overshadowed by those it once served to ennoble and edify, and as a result they themselves have become giant, grotesquely rigid parodies of their supple, dignified, and devoted predecessors in Millet's painting.

Dalí spewed invective on Millet's *Angelus*, calling it "miserable, tranquil, insipid, imbecilic, insignificant, stereotyped, and conventional to the most mournful degree," warning that it was a portent of something ominous. With an almost Nietzschean perspicacity, he wrote that "under the grandiose hypocrisy of a content manifestly the sweetest and the most worthless, *something is happening*."¹⁵ What was happening was that an eccentric artist with great technical skill was scandalized by the work of a less gifted predecessor who was nonetheless more in touch with the hunger of the human heart and more acquainted with the subtle ways Christ and his Church awaken and feed that hunger.

Salvador Dalí has given us a pictorial representation of the meaningless incomprehension that Corbin saw foreshadowed by the marginalization of

church bells in nineteenth-century France. If it is possible to detect in Millet's painting a wistfulness about the passing of a once familiar devotion, in Dalí's case we have a harbinger of what the demise of such devotions presages. Indeed, the two paintings might be seen as an artistic analogue of the relationship between the warnings of *Humanae vitae* and the cultural and moral consequences of the rejection of those warnings.

While in Europe in 2001, I had a chance to visit the Cologne cathedral. Before leaving the cathedral, I climbed the long, spiraling staircase to the bell tower and gazed in wonder on the great St. Peter bell, weighing twenty-four tons and measuring three yards across. I took care to vacate the bell tower before the deafening sounds rang out. But shortly thereafter I came out of the dark cathedral only to find, in the little plaza in front of the cathedral, a rock band blaring away a form of "music" called *heavy-metal*, an appellation the Russian commissars of Stalin's day might have found congenial to their cultural sabotage. Those enthralled by this grimly Dionysian noise orchestra, which conspicuously failed to bring its votaries into anything approaching a genuine communion, were unbeknownst to themselves heirs of those increasingly desperate efforts to return to what is naively imagined to be a pre-Christian way of life, shorn of the cultural efforts to instill virtues and moral principles conducive to a genuinely free and dignified existence. What, in fact, their labored exhibition of liberation demonstrated was that virtually everything we do in post-Easter history amounts to our answer to the central question: Who do you say that I am?

Sobering though the juxtaposition of a great cathedral that took 632 years to build and the vacuous and depressing ritual performed by those who imagined themselves liberated, not even from that clarifying contrast could this writer have imagined what the once Christian culture of the West would look like a decade and a half on.

The deritualization of social life invites struggles for power. Far from being an enlightening process, the destruction of ritual in Western culture is a major symptom of its demonic character, opening up the possibility of some persons feeding themselves on the destruction of others. Here, indeed, sex and politics converge in anti-credal movement, a convulsive fury of systematic destruction at once sexual and technological.¹⁶

Cyril O'Regan provides both the wider scope of the problem of our time and specifies its distinctly Christian connotations:

On behalf of modernity the Enlightenment presents the license to forget as essentially a matter of being human. The roots to be forgotten are endless and include the nation, ethnic group, community, physical place, social and gender roles. The Christian tradition

is, of course, an object of such forgetting, indeed historically the prime one, since it represents an obstacle to the Enlightenment ethos in general and the imperative to forget in particular in the memory enacted in liturgy, in its customs and cults which bring the past to bear on the present, and its commitment to particular beliefs and values that appear to have timeless sanction.¹⁷

May God give us the grace to participate ever more fully in the memory enacted in liturgy and to cherish the customs and cults that free us from the factory whistles and noise orchestras of our age.

The Holocaust and Human Perfection

*Richard Francis Crane**

ABSTRACT: The Holocaust is not only the quintessential genocide, but was a culmination of modern thought regarding historical progress and the human person. The Nazis were not the only people to advocate eugenics, euthanasia, and even extermination to combat degeneration and promote progress. In response, Catholic intellectuals such as Romano Guardini, Henri de Lubac, and Jacques Maritain offered critical assessments of what Guardini described as “the ominous spectacle of a human nature withering beneath the destructive hand of modernity.” Their reflections still have relevance, as advances in biomedical technology raise new questions about what it means to be human in an age of the relentless pursuit of technologically driven perfectionism.

SHORTLY AFTER THE SECOND WORLD WAR, a professor at the University of Tübingen asked his students to reflect on just what had happened in Germany and Nazi-occupied Europe over the past few years. He cast serious doubt on whether the recent atrocities could simply be laid at the feet of Adolf Hitler and his henchmen and be forgotten: “Monstrosities of such conscious design do not emerge from the calculations of a few degenerate men or of small groups of men; they come from processes of agitation and poisoning which had been long at work.”¹ When Romano Guardini spoke these words, no one used the word “Holocaust” yet—that term would not enter our lexicon until the 1960s—nor had the Nazi genocide become a field of academic study or a prolific category in popular culture.

Today, one can hardly escape the subject. Thousands of books have been written about the rise of Hitler and the formation of the Third Reich; about the growth of racist antisemitism and the legacy of anti-Judaism; and finally, about how under a totalitarian regime, science, technology, and bureaucracy all focused on the single-minded task of exterminating millions of men, women, and children. In one very challenging study, sociologist Zygmunt Bauman implicates modern civilization itself as a driving force behind the genocide:

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¹ Romano Guardini, *The End of the Modern World* (Wilmington, DE: ISI Books, 2001), 86 [original: *Das Ende der Neuzeit* (Wu"rzburg: Werkbund-Verlag, 1950)].

“The Holocaust was not an irrational outflow of the not-yet-fully-eradicated residues of pre-modern barbarity. It was a legitimate resident in the house of modernity; indeed one who would not be at home in any other house.”¹

The Holocaust is not only the quintessential genocide, but was a culmination of modern European thought regarding historical progress and the human person. Nazi leaders were not the only people in the Western world to advocate eugenics, euthanasia, and even extermination as tools to combat degeneration and promote progress. In response to this twentieth-century crisis, Catholic thinkers such as Guardini, Henri de Lubac, and Jacques Maritain offered critical assessments of what Guardini described as “the ominous spectacle of a human nature withering beneath the destructive hand of modernity.”² Their reflections still have relevance, as advances in biomedical technology raise new questions about what it means to be human in an age of the relentless pursuit of technologically driven perfectionism.

Nazism & Life

The Nazis did not see themselves as murderers. In October 1943, Reichsführer Heinrich Himmler addressed a group of SS officers in Poznan, Poland, offering an uncharacteristically frank description of “the evacuation of the Jews, the extermination of the Jewish people.” He congratulated these mass killers for having earned their place in a selfless brotherhood that stood above the German masses:

Most of you will know what it means when 100 bodies lie together, when 500 are there or when there are 1000. And...to have seen this through and—with the exception of human weakness—to have remained decent, has made us hard and is a page of glory never mentioned and never to be mentioned.

He also stressed that SS members had not personally profited from the dispossession of the Jews:

Because we don’t want, at the end of all this, to get sick and die from the same bacillus that we have exterminated. I will never see it happen that even one...bit of putrefaction comes in contact with us, or takes root in us. On the contrary, where it might try to take root, we will burn it out together. But altogether we can say: We have carried out this most difficult task for the love of our people. And we have suffered no defect within us, in our soul, or in our character.³

¹ Zygmunt Bauman, *Modernity and the Holocaust* (Ithaca, NY: Cornell University Press, 1989), 17.

² Guardini, *The End of the Modern World*, 51.

³ “Himmler’s Posen Speech: ‘Extermination,’” *Jewish Virtual Library*, available at

While Himmler's words here focus on matters economic and ethical, his terminology is pointedly biological, and his listeners were more than familiar with this way of thinking.

The Third Reich's leaders described National Socialism as a world view rooted in nature rather than as a political ideology contrived through reason. According to Hitler's chief propagandist Joseph Goebbels, this *Weltanschauung* "has nothing to do with knowledge and education," while race theorist Alfred Rosenberg extolled a movement that "smashes the egalitarianism of the democratic world of thoughts and brings back the emotional/intuitive and willing existence of the nation with the eternal laws of nature." In short, Nazism sought to explain itself as a radical existentialism that, as one scholar puts it, emphasized "the experienced life, activated life, feeling of life, life wholeness, and totality of life."¹ The supposedly life-affirming Nazi worldview claimed for itself a scientific legitimacy. In the Third Reich, political biology was the height of ethics; it entailed the purification and safeguarding of a racialized "community of the chosen," and the elimination of the unfit.²

Combatting Degeneration

Nazi racial hygiene drew inspiration from eugenics, social Darwinism, and race theory, as well as what historian Richard Overly terms a "sense of morbid decline" felt through the West after 1918.³ Max Nordau's 1892 book *Degeneration* had raised the question of whether or not the conditions of modern, urban life constituted a psychological and physical threat to human beings. The idea that *homo sapiens* could be the cause of its own demise received terrible validation through the mechanized slaughter of the Great War, which stoked the fire of cultural pessimism. Thousands of readers saw some of their worst fears confirmed in the pages of *The Decline of the West* by Oswald Spengler, as well as the writings of countless pseudo-scientists and racist pamphleteers such as Lothrop Stoddard, who sounded the alarm of a *Rising Tide of Color* that threatened to swamp a "debilitated and uncured" white race.⁴

In the interwar United States, federal and state legislators offered

<https://www.jewishvirtuallibrary.org/himmler-s-poses-speech-quot-extermination-quot>.

¹ Boaz Neumann, "The National Socialist Politics of Life," *New German Critique*, no. 85 (Winter 2002): 122.

² Wolfgang Bialas, "The Eternal Voice of the Blood: Racial Science and Nazi Ethics," in *Racial Science in Hitler's New Europe, 1938-1945*, ed. Anton Weiss-Wendt and Rory Yeomans (Lincoln, NE: University of Nebraska Press, 2013), 362.

³ Richard Overly, *The Inter-war Crisis: 1919-1939* (Harlow, UK: Pearson Education Limited, 2010), 39.

⁴ Lothrop Stoddard, *The Rising Tide of Color Against White World Supremacy* (New York: Charles Scribner's Sons, 1921), 16.

inspiration to the Nazis. In 1924 Congress passed Immigration Restriction Laws that effectively cut the flow of immigrants from southern and eastern Europe; a decade later German medical journals would praise America for having resolved its Jewish question through these restrictive quotas.¹ Compulsory sterilization laws also would receive praise (and imitation) from the Nazis. By the end of the 1930s thirty-one American states (beginning with Indiana in 1907) enacted such laws “for the hopelessly defective and criminal classes,” sometimes including provisions for castrations or forced abortions.² Historians Michael Burleigh and Wolfgang Wippermann explain that in *Mein Kampf* “Hitler eschewed technical scientific terms like Weissmann’s ‘germ plasm’ or Mendelian ‘hereditary properties’ in favor of calls for the ‘maintenance of the purity of the blood.’” The same kind of popularized biopolitics can be seen in a poster from the Kansas Free Fair (also from the 1920s) promising that supposedly hereditary “human traits such as feeble-mindedness, epilepsy, criminality, insanity, alcoholism, pauperism” could be bred out of the American populace “in three generations.”³

While breeding out the above list of undesirable traits cannot simply be equated with what would later happen in the Nazi camps, the premise is the same. As German racial hygienist Erwin Baur wrote in 1933: “I am firmly convinced that the chief causes of the degeneration of cultures and civilized peoples are biological in nature.”⁴

Life Unworthy of Life

Nazi racial hygiene provided the guiding principle for forced sterilization from 1933 onward, the secret killing of mental patients and handicapped children beginning in 1939, and the Final Solution by 1942. But the rationale for dehumanizing and disposing of the unfit came from pre-Nazi sources. For example, the term “life unworthy of life” predated the Third Reich by more than a decade. In 1920, jurist Karl Binding and psychiatrist Alfred Hoche published

¹ Robert N. Proctor, *Racial Hygiene* (Cambridge, MA: Harvard University Press, 1990), 97-100.

² Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics & American Economics in the Progressive Era* (Princeton, NJ: Princeton University Press, 2016), 110. The quoted words are from the 1911 legislation signed by New Jersey governor Woodrow Wilson.

³ “Treasures of the APS: Promoting Eugenics in America,” *American Philosophical Society*, available at: <https://amphilsoc.org/exhibits/treasures/aes.htm>.

⁴ “Die Hauptursachen der Degeneration der Kulturen und Kulturvölker sind aber nach meiner festen Überzeugung biologischer Natur.” Quoted in Thomas Junker, “Biologie und gesellschaftliche Reformprojekte in der ersten Hälfte des 20. Jahrhunderts,” in *Soziale Evolution Die Evolutionstheorie und die Sozialwissenschaften*, ed. Tamás Meleghy and Heinz-Jürgen Niedenzu (Innsbruck: Österreichische Zeitschrift für Sociologie, 2003), 316.

a treatise titled “Permitting the Destruction of Life Unworthy of Life,” advocating the legalization of euthanasia and pointedly rejecting “the obscene idea that the God of love could wish that human beings not die until they undergo endless physical and spiritual suffering.”¹ Today this reasoning would most likely be applied to an individual’s “right to die,” but the argument of Binding and Hoche ultimately placed the eugenic health of the body politic over any of its members:

Reflect simultaneously on a battlefield strewn with thousands of dead youths, or a mine in which methane gas has trapped hundreds of energetic workers; compare this with our mental hospitals, with their caring for their living inmates. One will be deeply shaken by the strident clash between the sacrifice of the finest flower of humanity in its full measure on the one side, and by the meticulous care shown to existences which are not just absolutely worthless but even of negative value, on the other.²

Doubtless the allusion of Binding and Hoche to the trauma of the Great War resonated with their readers, as did the utilitarian calculation of the cost of maintaining the unfit in public institutions.

While Binding and Hoche insisted that euthanasia only be performed by doctors upon willing patients,³ they also offered a broad selection of patients incapable of giving consent, either on account of unconsciousness or mental debility. Such “lives of negative value,”⁴ or “dead weight existences,”⁵ could be terminated upon the approval of a three-doctor panel whose judgments could be counted on “with one hundred per cent certainty.”⁶ Binding and Hoche helped solidify a growing trend of support for “mercy killing” within the German medical profession. According to historian Robert Proctor, physicians believed that the Nazi regime was serving their agenda rather than the other way around: “Doctors were never *ordered* to murder psychiatric patients or handicapped children. They were *empowered* to do so, and fulfilled their task without protest, often on their own initiative.”⁷ This consensus among practitioners was

¹ Karl Binding and Alfred Hoche, “Permitting the Destruction of Unworthy Life: Its Extent and Form. Essay One: Legal Explanation,” *Issues in Law & Medicine* 8, no. 2 (Fall 1992): 232 [original: *Die Freigabe der Vernichtung Lebensunwerten Lebens* (Leipzig: Verlag von Felix Meiner, 1920)].

² *Ibid.*, 246.

³ *Ibid.*, 250; see also Howard Brody and Wayne Cooper, “Binding and Hoche’s ‘Life Unworthy of Life’: A Historical and Ethical Analysis,” *Perspectives in Biology and Medicine* 57, no. 4 (Autumn 2014): 500-11.

⁴ Binding and Hoche, “Permitting the Destruction of Unworthy Life,” 254.

⁵ *Ibid.*, 262.

⁶ *Ibid.*, 264.

⁷ Proctor, *Racial Hygiene*, 193.

reinforced by arguments for eugenic euthanasia from turn-of-the-century Darwinian intellectuals such as Ernst Haeckel and Alfred Ploetz.¹ Such ideas proliferated on both sides of the Atlantic.

The New Man

From his laboratory at the Rockefeller Institute in New York, Dr. Alexis Carrel lamented what he saw as “the backwardness of the sciences of life over those of matter.”² He had devoted his career to saving lives and increasingly saw his task as that of saving civilization. Carrel hoped to achieve through science the kind of miracles he believed occasionally occurred at Lourdes.³ The French-born Nobel Prize winning surgeon collaborated with Charles Lindbergh in creating a perfusion pump to keep organs alive outside the body, and is today credited with having helped pave the way for transplant surgery. Carrel and Lindbergh shared a devotion to prolonging life, perhaps even finding the key to immortality, not for all mankind, but for a racial and intellectual elite.⁴ Like so many of his contemporaries, Carrel believed that scientists needed to focus on the increasingly visible signs of degeneration, “particularly diseases of the mind ...more dangerous than tuberculosis, cancer, heart, and kidney diseases...chiefly because they weaken the dominant white races.”⁵ Such degenerative ills could not be cured with devices like the perfusion pump, but instead called for new advances in social engineering.

Carrel and Lindbergh dreamed of establishing an Institute of Man at which dedicated scientists living in monastic seclusion would advance a doctrine of biomedical holism. As Carrel explained to an audience at Dartmouth College in 1937, the “solution to the great problems of civilization...[d]epends on the knowledge not only of certain aspects of man, but of man as a whole, understood

¹ Richard Weikart, “Darwinism and Death: Devaluing Human Life in Germany, 1859-1920,” *Journal of the History of Ideas* 63/2 (April 2002): 338.

² Alexis Carrel, *Man, the Unknown* (New York: Harper and Brothers, 1935), 28 [original: *L’Homme, cet inconnu* (Paris: Plon, 1935)].

³ Carrel testified to the veracity of at least one case of miraculous healing observed firsthand at Lourdes, but one scholar cautions against adding a Catholic apologetic sheen to a eugenicist who spent his entire career outside the Church: “After the voyage to Lourdes [1903], his philosophy became a vague spiritualism, open to the transcendent, but pre-occupied with such phenomena as clairvoyance and mental telepathy.” John J. Conley, S.J., “The Strange Case of Alexis Carrel, Eugenicist,” *Life and Learning* 23 (2013): 284-85. Cf. Joseph T. Durkin, S.J., *Hope for Our Time: Alexis Carrel on Man and Society* (New York: Harper & Row, 1965).

⁴ See David M. Friedman, *The Immortalists: Charles Lindbergh, Dr. Alexis Carrel and Their Daring Quest to Live Forever* (New York: HarperCollins Publishers, 2007).

⁵ Carrel, *Man, the Unknown*, 155.

as an individual belonging to a group, nation and race.”¹ Carrel’s 1935 bestseller *Man, the Unknown* assigned to a technocratic elite the duty to excise predatory elements from the social body, and to do so through the most efficient and effective means:

Criminality and insanity can be prevented only by a better knowledge of man, by eugenics, by changes in education and in social conditions. Meanwhile, criminals have to be dealt with effectively. Perhaps prisons should be abolished. They could be replaced by smaller and less expensive institutions. The conditioning of petty criminals with the whip, or some more scientific procedure, followed by a short stay in hospital, would probably suffice to ensure order. Those who have murdered, robbed while armed with automatic pistol or machine gun, kidnapped children, despoiled the poor of their savings, misled the public in important matters, should be humanely and economically disposed of in small euthanasic institutions supplied with proper gases.²

The purification of society also demanded virtuous behavior, including reproductive restraint. “No human being has the right to bring misery to another human being,” Carrel insisted. “Still less, that of procreating children destined to misery. Thus, eugenics asks for the sacrifice of many individuals.”³ The outbreak of the Second World War would prevent Carrel and Lindbergh’s Institute of Man from starting its work. But the war did facilitate the sacrifice of many individuals.⁴

Catholic Responses

Long before historians started to assess the significance of the Holocaust, several Catholic intellectuals offered their own reflections on how advances in science and technology had coincided with a cheapening of human life. Philosopher Jacques Maritain, who served as France’s first postwar ambassador to the Holy See, addressed an audience in Rome in 1945. Maritain, who had agitated against antisemitism before the war, diagnosed the murderous biopolitics at the heart of Nazism:

The history of mankind is proof enough that human life, as the life of an individual in the group, is indeed cheap. Only yesterday, across the Rhine, we saw to what atrocities a

¹ Quoted in Andr s Horacio Reggiani, *God’s Eugenicist: Alexis Carrel and the Sociobiology of Decline* (New York: Berghahn Books, 2007), 90-91.

² Carrel, *Man, the Unknown*, 318-19.

³ *Ibid.*, 300-01.

⁴ Carrel returned to France in 1941, occupied a prominent position in the collaborationist Vichy regime, and remains a controversial figure in French historical memory. See Reggiani, *God’s Eugenicist*, 1-8, and R gis Meyran, “ crits, pratiques et faits. L’ethnologie sous le r gime de Vichy,” *L’Homme* 150 (April-June 1999): 207-10.

purely biological concept of society can lead. The destruction of human lives, which were believed to have become a burden on the community, was not only permitted, but even extolled.¹

Maritain's assertion that the "the dignity of the human person is inalienable and human life is a sacred right"² served not only as an indictment of Nazi atrocities, but a deeper criticism of making human beings disposable for greater ends.

The Jesuit Henri de Lubac, speaking at a symposium in Paris in 1947, pondered the natural and supernatural destiny of a human species fully capable of destroying itself:

Prepared, aroused already by a series of technical and social transformations of which previous centuries offer scarcely any examples, by progress and also by catastrophes previously unknown to us, a new man is sought today: What does our faith have to say about him? In what way will it aid his birth? From what illusions and what dangers will it protect him?³

For de Lubac, the undoubted advances of the modern age also entailed threats to the human person. "Three facts of consciousness" had reshaped human striving: a sometimes naïve and sometimes messianic faith in science; a directing of science toward transforming, dominating, and possessing the natural world; and a "technology of man" based on the supposed malleability of human nature.⁴

Finally, Romano Guardini took stock of the human toll of the recent conflict and proclaimed nothing less than "the end of the modern world." By this he meant the demise of a faith in temporal progress based on "[n]ature subsisting in itself," a radical view of "autonomous personality," and a "self-created" culture that generates its own norms.⁵ This judgment did not, however, entail a rejection of every advance made to ameliorate unnecessary suffering and promote human flourishing: "That humanity was matured and deepened by its experience of the modern world cannot be denied.... Our concern of the moment is neither to repudiate nor to glorify; it is to understand the modern world, to comprehend why it is coming to an end."⁶ Guardini, like Maritain and de Lubac,

¹ Jacques Maritain, *The Person and the Common Good*, trans. John F. Fitzgerald (Notre Dame, IN: University of Notre Dame Press, 1966), 48. [original: *La Personne et le Bien Commun* (Paris: Desclée de Brouwer, 1947)].

² *Ibid.*, 48.

³ Henri De Lubac, *The Drama of Atheist Humanism* (San Francisco: Ignatius Press, 1998), 401. [original: *Le Drame de l'humanisme athée* (Paris: Spes, 1944)].

⁴ *Ibid.*, 403-07.

⁵ Guardini, *The End of the Modern World*, 50.

⁶ *Ibid.*, 51.

had no desire to repudiate modernity *tout court*, but rather asked whether the drive for human perfection through scientific progress is truly healthy for the human person, particularly when the price of perfection is the forsaking of human dignity.

Conclusion

The reduction of the human person to a biological entity wrought horrific consequences during the Holocaust, and the kind of progressive thinking that advocated eugenics, euthanasia, even extermination as acceptable means to legitimate ends was embraced by a far wider circle than just the Nazis gathered around Hitler. Guardini, de Lubac, and Maritain looked forward as well as backward when they contemplated the significance of a conflict that they survived, but which saw millions of others perish. When St. John Paul II referred to Auschwitz as the “Golgotha of the modern world,” he was not just describing the site of a massacre; he was linking the enormity of Golgotha to modernity’s enormity—its giant factory of death and its laboratory of human degradation.

Arguably, only a totalitarian state founded on racism could have achieved the terrible success that was wrought in Nazi Germany’s war against the Jews. But will nothing short of a Fourth Reich ever again threaten human lives and human dignity in the name of scientific progress? Physician and scientist Leon Kass believes that “the essence of the peril lies, ironically, in the zealous pursuit of the more perfect human,” of our turning to a “scientific savior who would take away the sin of suffering altogether,” and “a search for perfection [that] makes imperfection all the more intolerable.”¹ The racial hostility that led the Nazis to commit mass murder has largely abated, but the techniques remain at our disposal, ready to be employed for more therapeutic, and putatively humanitarian, ends. What factors should motivate, guide, and restrain us as we contemplate the creation and destruction of human life? When scientific materialism alone defines who we are and where we are headed, then truly anything is possible.

¹ Leon R. Kass, “A More Perfect Human: The Promise and Peril of Modern Science,” in *Medicine After the Holocaust: From the Master Race to the Human Genome and Beyond*, ed. Sheldon Rubenfeld (New York: Palgrave Macmillan, 2010), 110-13.

‘Till We Have Facebook’: On Christian Existence in the Age of Social Media

*D. C. Schindler**

ABSTRACT: The drama of the soul in the ancient world is arguably the reverse of the drama that faces the soul in the postmodern age. In C. S. Lewis’s celebrated retelling of the Greek myth, *Till We Have Faces*, the soul (Psyche) has to learn in love (Eros) to trust in the reality of things unseen; in our age, the greater challenge is learning to believe in the reality of things we can see. Social media presents a kind of negative transcendence: it promotes a separation from the body, with its essential limits in time and space, but in the direction, not of spiritual depth, but of im-mediate sensuality and immediate significance. To resist this requires a recovery of the capacity to suffer the presence of the other, that is, to undergo the discipline and patience of mediation.

BESIDES BEING A BEAUTIFUL AND POWERFUL retelling of the ancient Greek myth of Psyche and Eros, C. S. Lewis’s novel *Till We Have Faces*¹ can be read as an account of the drama of the soul as the pagan world transitions into the Christian. In the story, Psyche represents something of a natural saint, who deepens her vision, as the fruit of her astonishing goodness, so as to be able to see the glorious splendor of a reality that lies beyond the physical senses, and indeed beyond what everyone else can see. Her luminous goodness, which is a sort of translucence that allows a light to “break in from above,” ultimately provokes suspicion and contempt, even from her dearest sister, so that she is finally banished. The novel ends tragically, even if Lewis does not allow despair to be the final word.

The story Lewis retells here may be in some sense a timeless one; it may indeed be the case that the human soul will always face the drama of having to learn to look beyond what the senses reveal in order to open to a deeper, essentially spiritual truth. Faith and hope, perhaps even love, after all, concern an assent to things unseen, and this achievement calls on freedom and trust. But in our age it is arguably the converse drama that poses a more direct urgency, namely, the “leap of faith” required to believe in—that is, to give a deep, inward

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¹ C. S. Lewis, *Till We Have Faces: A Myth Retold* (New York: HarperOne, 2017).

assent to—the realities we can see! At the turn of the twentieth century, G. K. Chesterton prophesied that this age would come; he ended his wonderful book *Heretics* with the rousing words:

Everything [that is, everything in this new world] will become a creed. It is a rational position to deny the stones in the street; it will be a religious dogma to assert them. It is a rational thesis that we are all in a dream; it will be mystical sanity to say that we are all awake. Fires will be kindled to testify that two and two make four. Swords will be drawn to prove that leaves are green in summer. We shall be left defending, not only the incredible virtues and sanities of human life, but something more incredible still, this huge impossible universe which stares us in the face. We shall fight for visible prodigies as if they were invisible. We shall look on the impossible grass and the skies with a strange courage. We shall be of those who have seen and yet have believed.¹

Chesterton attributed this loss of faith in reality to a creeping rationalism that inevitably coincides with skepticism, worrying that our restriction of assent to the logically or scientifically verifiable would render us incapable of recognizing the truth of the plain evidence of our senses. But I would like to propose that the drama of the soul that Chesterton indicates here has evolved, and indeed rather quickly, over the past several decades. It is not modern rationalism that threatens our connection with reality most significantly, but rather a certain product of modern rationalism that has entered onto the center stage of the human spirit seemingly overnight: I am talking about technology, specifically, computer technology, and more specifically still, the variety of technologies we group under the name “social media.”

At first glance, it seems extraordinary to propose that the internet, especially in its social function, should pose any threat to reality. It is after all only a medium to convey information and does not dictate what content that information might hold. Assuming that the information is good or worthwhile, there can be no objection to its efficient distribution.

In this regard, the internet represents a singular achievement: it conveys like nothing else in history: unlike a conveyor *belt*, for example, which carries particular things along a single track from one point to another through time, the internet offers an infinity of connections between an infinity of points, connections that are not only in aspiration but actually in principle instantaneous. Again, assuming that these are good points, the internet is a great benefit, one of the greatest in history, the greatness of which is certainly proven by the fact that this technology has insinuated itself into our existence like no other technology before it. This is in a summary form the argument one might make to champion social media.

¹ G. K. Chesterton, *Heretics*, 6th ed. (Norwood, MA: Plimpton, 1905), 305.

But this argument is a red herring and has almost nothing to do with the charge being made, namely, that the internet poses a threat to our sense of reality, and we may now add: its danger is enhanced by its tendency to distract. Marshall McLuhan's famous line has, no doubt, been repeated so often that it has lost some of its intelligibility: "The medium is the message," he once wrote. But the insight that the phrase contains—an insight one encounters when reading the phrase in its original context, a book published in 1964—radiates all the more brilliantly in our current age.

As McLuhan explained, a medium is never a mere vehicle that indifferently conveys content, but inevitably bears on that content in subtle but profound ways; it communicates itself along with the information it provides. More specifically, what he intends to say by "the medium is the message" is that "personal and social consequences of any medium—that is, of any extension of ourselves—result from the new scale that is introduced into our affairs by each extension of ourselves, or by any new technology."¹ A medium establishes a relation between the recipient and that which is received, and both recipient and receptum are informed by the shape of that relation. Let us consider some of the shapes this relation can take.

As the classical thinkers recognized, the human soul itself is essentially a receptive medium, indeed the noblest medium in the natural world: namely, spirit, which elevates all those material things it comes to know, giving those things a spiritual, and so universal, existence that they do not possess simply of themselves. The most basic extension of ourselves, the spiritual medium of the soul, beyond ourselves and into the world, is the spoken word. This is, as it were, the *natural* extension of ourselves as embodied spirits. But there are a variety of artificial means—information technologies—that are able to extend this extension, so to speak. The first information technology was no doubt the invention of writing; and Plato was of course its first critic.²

It is easy to dismiss as laughable Plato's assessment of writing, because who would deny the obvious benefits of the written word? But we need to attend to the precise nature of his critique: Plato does not simply reject writing; instead, he worries about its use, or even better: he insists that we understand exactly *what* writing is and that we allow our use to flow from this understanding. Let us consider, very briefly, two aspects of his critique here, namely, the "reifying" of knowledge that occurs in writing, and the absence of the speaker that writing implies. We will see that the internet and social media amplify both of these aspects in an astonishing way.

¹ Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: Mentor, 1964).

² See Plato, *Phaedrus* 274b ff.

Whereas a spoken word fades the moment it enters existence, and so has its abiding reality only in the soul into which it enters, a written word sticks around, so to speak. This kind of word is not principally an act like the spoken word is, which connects two things, a speaker and listener; rather, it is a kind of thing in itself that is thus detachable from a particular context. It is this detachability that makes writing useful, but it is also this that presents certain dangers. One cannot possess speech without having heard it, whereas there is nothing to prevent one from owning a book one has never read. You can keep a spoken word only in your heart, whereas a book can be stored on a shelf.

A certain commodification of knowledge becomes possible in a new way with the existence of writing, which is less possible in the ideal case, namely, that of a “living, ensouled logos” that is “written down, with knowledge, in the soul of the listener.”¹ Now, what is distinctive about social media and the communications technologies that enable it is that the logos communicated through this medium is not received most directly into the soul of the listener but into a device.

In other words, what is reified in social media is not simply knowledge, but *the knower*; this technology reifies the soul itself rather than its object. The soul, at least in its spiritual function, which is now increasingly separated from its biological function, is becoming incarnate in a whole new way. If there were more time, we could present an argument that the soul is being increasingly displaced by a particular gadget, namely, the phone. The phone is where we store our memories, where we receive, reproduce, and creatively transform images; it is the seat of our relationships, that by which we communicate with others, that by which we do our thinking, and indeed, with the development of emojis, our feelings. Losing one’s phone is becoming uncomfortably close to losing one’s soul; it is less metaphorical than we like to admit when one expresses the drama of this loss by saying, “My *life* is in that phone!”

With extraordinary prescience, Kierkegaard once wrote in his journal: “Suppose someone invented an instrument, a convenient little talking tube that, say, could be heard over the whole land.... I wonder if the police would not forbid it, fearing that the whole country would become mentally deranged if it were used.”² That was in the nineteenth century. What someone has in fact invented is not just a talking tube, but a technological substitute for the soul that we carry around in our hands but that connects us immediately with the whole world (or at least with its digital representation). And, far from attempting to forbid it, the authorities, with subsidies from Silicon Valley and the various

¹ Ibid. 276a.

² Søren Kierkegaard, *Journals and Papers*, vol. 5 (Princeton, NJ: Princeton University Press, 2011), 150-51.

social media corporations, are seeking to place these gadgets in the hands of every creature on two feet. And although studies are now trickling out here and there revealing the damage this gadget is doing to the human psyche, we have scarcely begun to take stock of the mental derangement in store for us.

Plato's other criticism of writing concerns the absence of the "father of the logos" that it essentially implies. In contrast to writing, speaking requires the actual presence of speaker and listener, and so it connects the two in a concrete way. Let us note that it is precisely the limits entailed by embodiment, the limits of time and space, that make actual presence necessary.

Now, one of the signs of this concrete actuality is the fact that the connection is bilateral; the listener is able to respond to a word that is spoken, not only with new information but with questions that then require the speaker to elaborate, to explain, to justify, and to clarify. Thus, both remain present, not only to each other but also to the matter being spoken about, so that they can dwell with it and make it more and more evident.

One might say that part of the message of this particular medium is that real presence matters. To be sure, speaking does not in the least guarantee the conveyance of truth, but we can nevertheless say that to think that writing achieves everything that speaking does, only better (in other words to deny the special and indeed irreducible significance of speaking), is to deny the significance of real presence. Plato does not reject writing (indeed, he wrote a good deal, and quite beautifully). But by affirming its merely relative benefit as a reminder to those who already know, Plato was simply insisting that the actual presence implied by speaking is the principal medium, and that writing derives from this and serves it in turn. Speaking establishes the context for writing; problems occur when the more abstract medium is posited as more fundamental.

Now, one might argue, with some evident justification, that modern communications technologies represent an advancement in this respect beyond mere writing. Here we find, at least in principle, a return of some of the benefits of speaking: through texting, through the telephone, indeed through Skype and such things, we have in a sense the best of both worlds: the transportability of writing with the interchangeability of speaking. We can exchange with one another across vast distances, to the extent that distance has ceased to matter in our relationships: being across the planet is scarcely different from being across the living room. (That comparison cuts both ways.)

There is an obvious truth to this argument, and an obvious benefit to the immediacy of connection that social media affords. But this does not mean that we need to affirm it as good in an unqualified way. What I mean to do here is to highlight one dimension of this phenomenon, namely, that which bears directly on the problem raised at the outset: our connection with reality. The very benefit

I described has a dark side, as it were. The advantage of social technologies is that they allow us to communicate with others without being in each other's actual presence. But this is precisely what raises a danger.

There is a curious detachment of presence, in social media, from presence, or, to put it another way, the content of what is normally conveyed through personal presence is no longer connected to specific location in time and space and the kind of physical contact that lies at the foundation of the senses.¹ What we have here, then, is a kind of disembodied sensuality, which is really quite bizarre, if you think about it.

Normally, senses are connected to bodies, and the body is the outward profile of the soul. In and through our sense experience, we attend to the reality of the person before us, which obliges us to place ourselves actually before him, to await what he says, both through his speech and through the rich eloquence of what is called his "body language," to receive all of this through the vibrations generated by his very own mouth and in the natural light of the sun, perhaps to touch him or be touched by him as he speaks. The sense data are coming from a real thing, namely, a flesh-and-blood human being, and they unfold through a connected sequence of moments and at a particular place, which requires us to *be* somewhere and to take time, or to give our time. This is why people are a burden, just like every genuinely good thing is a burden. To be sure, there is a certain pleasure in being relieved of this burden and the convenience this relief brings, the possibilities it opens up, but this pleasure, though quite real, is by its very nature superficial and radically different from Christian joy and genuine human happiness.

The senses are meant to be the medium of real joy, because they mediate the real presence of human beings to each other. The various social media, by contrast, do not mediate this presence and do not aim to; the very point of social media is to make this presence unnecessary or inconsequential by substituting for it as fully as it can (or at least as fully as we want in any given situation). The best it can do is, to use Plato's phrase, to remind us of the presence we have already enjoyed, to recall to our mind our more basic contact with reality.

But to appreciate technology in this particular way requires that we take it lightly, as Plato recommended with regard to writing, which is to say that we do

¹ According to the tradition, the sense of touch represents the paradigm of sense experience insofar as it entails immediate presence: the medium of touch is in this case identical to the organ of touch, namely, the skin (in contrast to sight, for example, the medium of which is light, or hearing, the medium of which is air). Sight and hearing are considered the nobler senses because they display something of the transcendence of physical location that the spirit possesses (which, through abstraction, is able to think a thing entirely in its physical absence). In this regard, the internet is a kind of pseudo-spiritual medium: it does not so much transcend the actually physical, but disembodies it.

not allow it to establish our relations to other people (to “link us in,” as it were), to be the principal means by which we remain in contact, or to suffice for us in our relations to each other. In other words, social media ought not to lie at the beginning, the middle, or the end of the relationships between human beings. It ought instead to remain trivial. As trivial, it can in fact serve a purpose, and serve it marvelously. But the astonishing capacities social media offer to serve this purpose ought not to cause us to allow the tail to wag the dog.

What is at issue here is the order of relations; a healthy culture is one that gives primary importance to things that are first, secondary importance to things that are second, and so forth. In this respect, the weight that the social media have in our age, the amount of cultural energy spent in the development, perfection, and use of these technologies, the organized efforts made to insinuate these media not only into the simplest activities of our daily lives (such as grocery shopping, transportation, and the like) but into the most fundamental (such as education and courtship) begs for some reflection. As Marshall McLuhan has suggested, the most dangerous thing about modern media is not in the first place that we use them without much discrimination, but even more basically that we do not pause to think about what in truth they mean for us. What in fact is going on here?

Let us be clear that the questions we need to raise are not first moral questions but ontological ones. In other words, I am not suggesting that this or that particular activity is “immoral.” Instead, I am reiterating in a new context McLuhan’s observation that the use of these media entails a transformation of the meaning of human existence, and this fact calls for discernment and judgment, which we as a culture have thus far shown very little inclination to undertake.

But if and when we do undertake this discernment, it is good to recognize that there are also moral and political implications. To take one example: the unprecedented explosion of pornography, the addictions that it has entailed and the destruction that it has wrought in the constitutive relationships of human society cannot be set aside simply as an unfortunate misuse of social media. Instead, insofar as it is a simulation of human intimacy, sensual contact without the bonds entailed by real presence, pornography is rather a paradigmatic instance of social media, in relation to which the communication facilitated between good friends can be considered a far more incidental exercise, something less essential than pornography and more contingent, more deserving of the name “misuse,” perhaps, than the other, because it stands further outside the logic that defines social media.

A step or so beyond this: the moral and political questions raised by the new varieties of cloning, genetic manipulation and engineering, on the one hand,

and the “rights” to subsidized same-sex coupling, on the other, all turn on the status of nature in its concrete materiality, the given meaning of the body, and so forth. It is not just naive but altogether ignorant to think that a culture permeated from top to bottom by social media, which is by its essential logic oblivious to the natural with the limits that belong to it, will be capable of responding adequately to the questions posed.

With our insistence on the nonsubstitutable importance of embodiment, one might think that we are turning Plato on his head: Plato, after all, is thought to have considered the material things accessible to our senses to be, not reality itself, but an image of a super-sensual reality. This is what his famous allegory of the cave is generally understood to convey. But I bid you go back and read the passage from the *Republic* again with some care, if it has been some time since you have done so. You will discover that those trapped in the depth of the cave are not enslaved to material things. Instead, the slaves are consumers of shadows that have been altogether severed from any reality, which is to say their consciousness is wholly circumscribed by “images” that are not really images at all, since they do not point beyond themselves to something original. In other words, they do not mediate anything but themselves, so that the place they take for themselves is that of *im*-mediacy.

It would be hard to imagine a more fitting picture of social media. To be sure, the material things of embodied life that are the basis for the shadows projected into the caged minds lie for Plato at a low level, still deep inside of the cave. But it is crucial to recognize that they nevertheless lie behind the consumers of pure images, so that the prisoners have to “turn their whole soul around,” that is, to convert, in order to see them. And once this move is made, the further move to the transcendence of spiritual realities and ultimately to the Good is all but inevitable. In other words, there is for Plato a deep connection between seeing the truth of material reality and moving spiritually toward the Good that is the source of all truth and being. The disembodied character of the pure appearances is not a genuine image of spiritual transcendence, but its diabolical substitute.

In an age in which this substitution is becoming more central than the reality whose place it occupies, Christians have a special witness to bear, which is different from the explicit preaching of the Gospel, though it may be understood as a profound implication of this mission: the *im*-plicit is part of the gesture of incarnation. It is difficult to point to a single example of a technology that made things more efficient and convenient, in response to which the world said simply, “No, thank you.”

Indeed, it is difficult to imagine that such a thing could even be possible. To be able to do without something that makes things easier and is not in itself

morally objectionable requires a sense of a good that transcends convenience and its ilk. It is not outrageous to suggest that such a good lies beyond the horizon of what earlier ages referred to as “the world.” If this is the case, it may very well be that, in the West, only Christianity, and specifically only sacramental Christianity, offers the resources to resist the evident benefits of social media and communications technologies so that the soul may remain free. Religion, simply, is not enough, if religion is conceived as a connection with a reality that transcends the physical world of nature; what is necessary is a religion that celebrates the incarnation of this world-transcending reality in flesh and blood, which offers itself in the genuinely human experience of the Mass.

One of the most important expressions of Christian freedom in the twenty-first century is a freedom from technology. To enjoy this freedom, we need to set aside, at least initially, the question of whether technology is good, bad, or indifferent, which can distract from the most fundamental issue. The more basic question is this: What constitutes the form or shape of our existence? What lies at the center of our lives in the sense of serving as the governing principle, that which organizes everything else? How is this basic principle reflected, for example, concretely in the way we build and order our cities and our homes, the space in which we live and work? What are our principal activities, and what activities are secondary and tertiary with respect to these? Freedom from technology is not something that occurs most fundamentally in the discrete choices we might make moment to moment. It is not, in other words, first a moral achievement. Instead, freedom from technology can be granted by reality only because it is first in reality that God grants himself, and God is above all a saving power, the source of all liberation.

Washington Insider:

The Supreme Court: The Confirmation of Justice Kavanaugh and Important Recent Cases

*William L. Saunders**

ON MONDAY, OCTOBER 1, the Supreme Court's new term began. The Court that assembled was composed of eight justices, not nine, because at the conclusion of the prior term Justice Anthony Kennedy resigned, ensuring that the 2017–2018 term would be one of the most consequential in history.

On October 6, the Senate, in a special session, voted 50–48–1¹ to confirm Brett Kavanaugh as the ninth justice. Later that day, Kavanaugh was sworn into the Court during a private ceremony, Justice Kennedy administering the judicial oath and Chief Justice Roberts the constitutional oath. Though this is a bit unusual, it is not surprising, given Kavanaugh's relationship to Kennedy, the justice for whom he clerked and his mentor in some ways.

On October 8, Kavanaugh was publicly and ceremonially sworn in by President Donald Trump at the White House. Trump had been away from Washington from the day of the vote until Monday.

Kavanaugh had been nominated by President Trump on July 9.² The nearly

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¹ Senator Lisa Murkowski (R-AK), who announced her opposition to the confirmation the previous day, voted "present." Senator Steve Daines (R-MT) was absent, attending his daughter's wedding in Montana, though a friend had volunteered to engage a private jet to fly him back if his vote was needed. See Jordain Garney, "Gianforte Offers GOP Senator Plane to Return for Kavanaugh Vote," Jordain Garney, *The Hill* (October 5, 2018), <https://thehill.com/>.

² Some argued that since President Trump was subject to the investigation by Special Counsel Robert Mueller, no Supreme Court nominees of his should be confirmed while the investigation was ongoing. However, this has never been the Senate's practice. For

three months between that day and the day he was confirmed were filled with intense political activity, with many twists and turns, all marked by extreme rancor. As Maine's Republican senator, Susan Collins, said when announcing, the day before the vote, that she would vote for Kavanaugh, "Today we have come to the conclusion of a confirmation process that has become so dysfunctional it looks more like a caricature of a gutter-level political campaign than a solemn occasion."¹

How has America come to this point? As Collins said, "Our Supreme Court confirmation process has been in steady decline for more than thirty years." She was referring to the historic, highly organized, and successful effort to defeat the nomination of Robert Bork in 1987, the term for which ("borking") has entered the lexicon.² From that day forth, the confirmation process has been notably politicized.

Still, last year at this time, the Senate voted 54 to 45 to confirm Trump's first Supreme Court nominee, Neil Gorsuch, to the Court. At that time, three Democrats joined the Republicans. This time only one Democrat joined the Republicans, Joe Manchin of West Virginia; one Republican, Lisa Murkowski, opposed the nominee. More strikingly, the public discourse was harsher and more inflamed, including angry demonstrations—and arrests—on Capitol Hill. Why the difference?³

Part of the reason is that, as with the nomination of Clarence Thomas in 1991, an accuser appeared alleging sexual misconduct by Kavanaugh. Those allegations became public after the first phase of the confirmation process—what one might call the "ordinary" phase, during which the nominee's judicial qualifications are vetted by the Senate Judiciary Committee, which holds hearings with the nominee and others as witnesses—had concluded in mid-September. I will review this ordinary phase of the Kavanaugh confirmation proceedings first.

There has rarely, if ever, been a nominee more objectively qualified for the Supreme Court than Kavanaugh. An honors graduate of Yale College, he graduated from Yale's law school, where he was an editor of the law review.

instance, during pending investigations of Whitewater and President Clinton, both Ruth Bader Ginsburg and Stephen Breyer were confirmed to the Court (in 1993 and 1994, respectively).

¹ "Read Susan Collins's Speech Declaring Support for Brett Kavanaugh," *The New York Times* (October 5, 2018), <https://www.nytimes.com/>.

² See, for example, *Merriam-Webster*, s.v. "bork," <https://www.merriam-webster.com/dictionary/Bork>.

³ Of course, the Gorsuch hearings were also quite partisan. After Democrats threatened to filibuster, the Republicans made a rule change that prevented them from doing so by requiring less votes to confirm.

After law school, he clerked, successively, for two Court of Appeals judges and then, in 1993–94, for Anthony Kennedy on the Supreme Court.

After that, he worked for the independent counsel, Ken Starr, during the investigation of President Bill Clinton. Then he became a partner at a top D.C. law firm. Next, he joined the administration of President George W. Bush. He was nominated by President Bush and confirmed by the Senate in 2006 to the U.S. Court of Appeals for the D.C. Circuit, a court with great prestige because it handles important cases dealing with federal agencies. It is sometimes called the second highest court in the land, though technically it is merely one of the thirteen Courts of Appeal.

Kavanaugh served with distinction on the D.C. Court of Appeals for twelve years, issuing or joining opinions in more than 300 cases.¹ His reasoning was subsequently adopted by the Supreme Court eleven times. More than half of his law clerks were women, and many were minorities. He was active in his church and in various charitable activities. All the while, he taught at major law schools (such as Harvard) and published articles in the most distinguished law reviews. Given his accomplishments, it is no surprise that the American Bar Association—whose judicial ranking was called the “gold standard” by Democratic Senator Chuck Schumer (NY)—gave him its highest rating, “well qualified.”

Yet when his nomination was announced, the same Charles Schumer said he would “oppose Judge Kavanaugh’s nomination with everything I have.”² Democratic members of the Senate Judiciary Committee, without asking Kavanaugh a single question, did likewise.³

The hearings themselves opened with a spectacle unseen in the Senate in recent memory. Democratic members continually interrupted Chairman Chuck Grassley (R-IA), calling for an adjournment.⁴ One of their complaints was that many documents that passed through the hands of Kavanaugh when he served as White House staff secretary under President Bush had not been produced, even though, eventually, more documents were produced from Kavanaugh’s service than for any other Supreme Court nominee in history, and, obviously, the

¹ His opinions were joined by Democratic-appointed colleagues at the same rate (88 percent) as they were joined by judges appointed by Republicans.

² Charles Schumer (@SenSchumer), Twitter, July 9, 2018, 6:23 PM, <https://twitter.com/senschumer/>.

³ On the day Kavanaugh was nominated, three Democratic members of the Judiciary Committee came out against him. See: (1) “Sens. Blumenthal, Murphy Say They Will Vote Against Trump’s Supreme Court Pick Judge Brett Kavanaugh,” *Hartford Courant* (July 09, 2018); (2) Sen. Booker, Press Release, July 9, 2018; (3) Sen. Durbin, Press Conference, July 10, 2018.

⁴ Andrew Kugle, “Durbin Confirms Dems Held Meeting about Disrupting Kavanaugh Hearing,” *Washington Free Beacon* (September 4, 2018), <https://freebeacon.com/>.

best evidence of how he would rule as a Justice comes from the public opinions he wrote as a judge. Furthermore, the hearings, lasting four days, from September 4 to 7, were continually interrupted by hecklers in the public gallery, who had to be removed from the hearing room by the Capitol police.

During this first phase of the confirmation process, Justice Ruth Bader Ginsburg, who despite having been general counsel for the ACLU won Republican support, lamented the partisanship that had developed since she was confirmed in 1993.¹ During the hearing itself, Lindsey Graham (R-SC) chastised Democrats on the committee for opposing Kavanaugh because they believed he would not support their preferred outcomes on contested social issues. Graham, noting that he voted for Sonia Sotomayor and for Elena Kagan, said in effect (as he had when Kagan was confirmed) that elections have consequences, and that the president has the right to choose nominees who are objectively qualified, as Sotomayor, Kagan, and Kavanaugh clearly are.² Indeed, the disruptive tactics of the Democrats and their allies might cause the Judiciary Committee to refrain from holding hearings on the next nominee, should another nomination occur while the Republicans control the Senate.³

During the hearings, Kavanaugh followed what is known as the Ginsburg rule when he declined to comment on particular cases, as had Ginsburg in 1993 when she said she would “offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular [future] case—it would display disdain for the entire judicial process.” He did say he would respect precedent, which seemingly reassured pro-choice Republicans but not pro-choice Democrats. But precedent is not an iron-clad law that can never be changed. The Court has always been willing to overrule prior cases, and has done so, for instance, when overturning racial segregation laws and when finding a right to same-sex marriage.

That Kavanaugh is a careful scholar regarding “precedent” is not surprising. He is the coauthor, along with twelve other judges (including now-Justice Gorsuch), of a 900-page tome on the subject, *The Law of Judicial Precedent*. The authors make it clear that precedent that is incorrect can and should be overruled; however, because of other considerations, it may take some time to do so:

¹ Cheryl Miller, “RBG Laments ‘Partisan Show’ of SCOTUS Confirmation Hearings,” *The Recorder* (September 12, 2018), <https://www.law.com/therecorder/>.

² Andrew Kugle, “Graham Slams Democrats’ ‘Hypocrisy’ for Opposing Kavanaugh over Republican Affiliations,” *Washington Free Beacon* (September 5, 2018), <https://freebeacon.com/>.

³ The committee is not obligated to hold hearings and could simply hold a vote on the nominee and send it to the full Senate for a final vote.

A precedent may yield not just wrong results...but gravely wrong ones (as with *Dred Scott*—the infamous pre-Civil War case in which the U.S. Supreme Court held that no black person, enslaved or free, could be a citizen of the United States, nor any individual state, and therefore had no standing in federal court.... While unjust decisions can be overruled, that change can come slowly, very slowly.¹

After the hearings, Kavanaugh answered 1,287 additional questions from Democrats, more questions by committee members than were posed to all the prior nominees to the Supreme Court.

Before the hearings began, the nominee, as is the usual practice, met with senators who wished to meet with him to answer questions. Several Democrats refused to meet with him. Among those who did meet with him, however, was Dianne Feinstein (D-CA), the ranking Democrat on the Judiciary Committee. Yet it was *only after the hearings had concluded and the Committee was preparing to vote* on whether to refer his nomination to the Senate floor for the ultimate vote that Feinstein revealed that she had been contacted by a constituent who claimed to be a victim of sexual misconduct by Kavanaugh thirty-six years ago when they were in (different) high schools; she said further that she had already referred the matter to the FBI.² For more than six weeks, Feinstein had been in possession of this letter, yet she never raised the matter in private meetings with Kavanaugh or with her committee colleagues. If she had, the committee would have investigated the matter as part of its regular proceedings and could have maintained the confidentiality of the constituent, as that constituent had requested.

Within a couple of days, the name of the accuser, Christine Blasey Ford, was disclosed. Her lawyers said she wanted to testify, and the Judiciary Committee began negotiations to arrange that. Three times, Senator Grassley extended the deadline for these negotiations. Eventually, it was agreed she would testify—as would Kavanaugh, who had demanded this opportunity when the allegations became known—in a special session of the committee on September 27.

In a highly charged atmosphere reminiscent of the hearings involving Clarence Thomas and Anita Hill, first Ford and then Kavanaugh testified. The Republicans retained a public prosecutor from Arizona, Rachel Mitchell, to conduct their questioning of Dr. Ford. While Ford adhered to her original accusation,³ Kavanaugh defended himself and his reputation in a strong and

¹ Bryan A. Garner et al., *The Law of Judicial Precedent* (Eagan, MN: Thomson West, 2016), 13, citations omitted.

² Alex Swoyer, “Top Democrat Sics Feds on Kavanaugh for High School-Era Incident,” *Washington Times* (September 13, 2018), <https://www.washingtontimes.com/>.

³ The witnesses Dr. Ford had identified did not corroborate her account, during either

emotional manner, calling the hearings a “disgrace” that would dissuade good people from public service.¹

During this entire period, a debate raged over whether Kavanaugh should be accorded a presumption of innocence or whether he should have to disprove the allegations. For instance, the American Civil Liberties Union, which does not take a position on judicial nominations, nonetheless asserted that the allegations alone disqualified him. Noted civil rights lawyer and retired Harvard Law professor Alan Dershowitz responded:

The American Civil Liberties Union stood strong against McCarthyism by demanding due process and hard evidence. But the ACLU now argues that “unresolved questions regarding credible allegations of sexual assault” be resolved against the nominee. We have come a long way since McCarthyism, but we now live in an age that risks a new form of sexual McCarthyism. We must not go to that even darker place. The best way of assuring that we don’t is to accord every person, regardless of his status, the kind of fundamental fairness we would expect for ourselves if we were accused.²

Two days after the hearing, the committee convened to vote on the nomination. The vote, along strictly party lines, approved the nomination of Kavanaugh 11 to 10. However, one of the Republicans, Jeff Flake (AZ), who was visibly shaken after having been verbally accosted in an elevator by a woman who claimed the Republicans were indifferent to the abuse of women, asked the Committee to delay an additional week so the FBI could conduct a background check of the accusations against Kavanaugh.³ In this request, he was joined by various Democrats on the committee, including Chris Coons (D-DE), and by

the committee investigation or the subsequent investigation by the FBI.

¹ “There has been a frenzy to come up with something—anything, no matter how far-fetched or odious—that will block a vote on my nomination. These are last-minute smears, pure and simple. They debase our public discourse. And the consequences extend beyond any one nomination. Such grotesque and obvious character assassination—if allowed to succeed—will dissuade competent and good people of all political persuasions from serving our country.” He subsequently apologized, in a *Wall Street Journal* op-ed, for any breach of etiquette or excessive language. See Brett Kavanaugh, “I Am an Independent, Impartial Judge,” *Wall Street Journal* (October 4, 2018), in which he added, “I hope everyone can understand I was there as a son, husband, and dad.” Several Democrats said his demeanor demonstrated a lack of “judicial temperament”; however, Republicans, such as committee member Orrin Hatch, saw this as “righteous anger” anyone would feel who found himself subject to a public campaign to destroy his reputation. See Orrin Hatch, “Brett Kavanaugh’s Righteous Anger,” *Wall Street Journal* (October 3, 2018), <https://www.wsj.com/>.

² Alan M. Dershowitz, “This Is No Mere Job Interview,” *Wall Street Journal* (September 30, 2018), <https://www.wsj.com/>.

³ Because of his career in public service, Kavanaugh had previously undergone six FBI background checks.

noncommittee Republicans Collins and Murkowski. Grassley and Senate Majority Leader Mitch McConnell (R-KY) agreed to the delay to let the FBI investigate.

After a week, the FBI issued its report, finding no collaborating witnesses or additional evidence supporting the claims of Dr. Ford.¹ As noted above, the Senate then voted to confirm Kavanaugh on October 6.

Kavanaugh will replace Kennedy, who was the swing vote many times between the four “liberals” and the four “conservatives” on the Court. (More about these misleading labels below.) This is highly significant, as can be seen from an examination of two of the most significant decisions of the Court at the end of the last term.

The first decision is *National Association of Family and Life Associates (NIFLA) v. Becerra* (June 26, 2018). The case involved requirements under California law for pro-life resource centers to display information about how to obtain an abortion, despite the fact that doing so would be directly contrary to the mission of those centers. The Supreme Court ruled that these laws “targeted” (were aimed to control) the speech of the resource centers and in doing so violated the free speech guarantees of the First Amendment.

However, it was a 5-4 decision. Kennedy joined the four conservatives to invalidate the law. Indeed, Kennedy even wrote a concurrence to emphasize the threat this posed. He said,

The California Legislature included in its official history the congratulatory statement that the Act was part of California’s legacy of “forward thinking.” But it is not forward thinking to force individuals to “be an instrument for fostering public adherence to an ideological point of view [they] fin[d] unacceptable.” It is forward thinking to begin by reading the First Amendment as ratified in 1791; to understand the history of authoritarian government as the Founders then knew it; to confirm that history since then shows how relentless authoritarian regimes are in their attempts to stifle free speech; and to carry those lessons onward as we seek to preserve and teach the necessity of freedom of speech for the generations to come.²

Significantly, the four liberals disagreed, finding that the California law, upon further proceedings, would “likely” be found to be constitutional, in other words, that the pregnancy resource centers would have display information about how to obtain an abortion

The second case was decided on June 4. It is *Masterpiece Cakeshop v.*

¹ A couple of other claims arose during this time against Kavanaugh, but the FBI found no witness corroborating those claims either.

² *National Institute of Family and Life Advocates v. Becerra* 85 U.S. ____ (2018) at 2 (Kennedy, J., concurring), internal citations omitted.

Colorado. The issue in the case was whether the state of Colorado, through its Civil Rights Commission, could force a baker, who objected on religious grounds, to prepare a cake for a same-sex marriage. The Court held 7 to 2 that the baker could not be forced to do so

Though this appears at first glance to depart from the liberal/conservative split on social issues (after all, seven justices formed the majority), a closer look reveals that is not the case. While two “liberals” joined the majority, they filed a concurrence indicating that if there had been no evidence of actual discriminatory intent by Commission members against the baker, they would have ruled against the baker.

Indeed, as Kennedy, who wrote the opinion, stated things, it is unclear whether the baker would have won in the absence of evidence of antireligious prejudice by the Commission:

When it comes to weddings, it can be assumed that a member of the clergy who objects...could not be compelled to perform the ceremony.... This refusal would be well understood in our constitutional order as an exercise of religion.... Yet if that exception were not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons.¹

In other words, the question is, What about the next case? Who wins when there is no evidence of antireligious hostility by the government? Where will the line be drawn? The issue is unclear in the wake of the Court’s 2015 decision in *Obergefell v. Hodges*. This opinion, written by Kennedy, was a 5–4 decision that recognized a right to same-sex marriage under the Constitution. A strong dissent, written by Chief Justice John Roberts and joined by the other “conservatives,” argued that the holding endangered religious freedom for those who opposed such marriage on religious grounds. Kennedy dismissed those concerns in a single paragraph. Nevertheless, the question remains: How will same-sex marriage rights be reconciled with religious freedom rights?

And that brings us back to Kavanaugh, who now replaces Kennedy. What is his judicial philosophy? Is it that of the four “liberals” and (on this issue at least) Kennedy that the job of a justice is to unpack the meaning of “liberty” in the Fourteenth Amendment as their own understanding of its meaning evolves, as they stated in *Obergefell*? Is it that of Kennedy himself who upheld the abortion right in 1992 in *Planned Parenthood v. Casey* by claiming abortion was part of “liberty” in the Fourteenth Amendment, which he interpreted “as the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life”? The “living constitution” philosophy of the

¹ *Masterpiece Cakeshop v. Colorado*, 584 U.S. ____ (2018) at 10.

liberals converts judges, through their assumed right to interpret the Constitution to solve matters not mentioned in the Constitution, into the real rulers of America, while the textualist/originalist philosophy allows the people to govern themselves on matters on which the Constitution is silent.

Notice that the Constitution itself does not make the Supreme Court into the supreme branch of government; rather, it divides power among all three branches of government, with the Court, in article 3, having the most modest role. Our democratic republic, created through the Constitution, establishes a system of checks and balances to prevent power from becoming concentrated, which could lead to tyranny. Thus, whenever a right is claimed to exist, the question is never: Do I believe there should be such a right? Rather, the question is always: Where is that right provided in the text of the Constitution? Otherwise, one person's "beliefs" become tyrannical over those who disagree. If Congress claims a right to do something, in light of the fact that Congress is given only specified (or "enumerated") powers under the separation of powers within the Constitution, the question is: Does Congress have the power to so act? In either case, if the right or power does not exist, those who believe it should exist are not without remedy, but that remedy is to convince their fellow citizens to create the right or the power, either by amending the Constitution or by passing a new national law.¹

While the "liberals" on the Court believe in the expansive "living constitution" philosophy at evidence in *Obergefell* and *Roe v. Wade*, Kavanaugh does not. Rather, Kavanaugh's philosophy is *textualism*,² or *originalism*³ – that is, he starts from the Constitutional text and interprets it in light of history and jurisprudential tradition, respecting (but not bowing down to) precedent.³ Originalism/textualism is, generally, the philosophy of those usually called conservatives on the Court. A careful reading of the Constitution shows that it does not mention abortion or same-sex marriage, while it expressly guarantees religious liberty in the very first phrase of the First Amendment.

In the end, it seems fair to conclude this argument about judicial philosophy

¹ That does not mean that a right could not be inferred from the text. However, the freedom for the Court to infer a right is extremely limited, as described by Chief Justice William Rehnquist in his majority opinion in *Glucksberg v. Connecticut*. Writing for a 5-to-4 majority, Rehnquist rejected the call to find a right to assisted suicide in the "liberty" interest, instead insisting that no implied right could be found unless "rooted in the nation's history and tradition." This approach stands in sharp contrast to the expansive approach taken by liberal jurists.

² Alex Swoyer, "Brett Kavanaugh Best Described as Originalist, Say Legal Scholars," *Washington Times* (September 3, 2018), <https://www.washingtontimes.com/>.

³ As Kavanaugh and his coauthors noted, "The American judiciary doesn't treat precedent as an ironclad edict." *Law of Judicial Precedent*, 14.

is the chief reason for the venom with which the Democratic leadership and its cultural allies attacked Kavanaugh, a nominee whom they knew they lacked sufficient votes to defeat.

From the Editor's Desk:

The Light of Faith in Times of Trouble

*Joseph W. Koterski, S.J.**

1. A Time to Fast and Pray

In recent months there have been many things written to address the scandals that have rocked the Church. One is hesitant to add anything else. In addition to the fine suggestions already made about how to proceed, let me dare to offer one thought for our consideration: that at their next meeting the bishops of the United States consider some corporate, public penance we could all do together.

One of the important aspects of being a member of the Church is that there is need for us to act and to pray together. Above all, we need to pray to God in reparation for the sins that have been committed. This is part of the Church's doctrine of atonement. Further, to restore trust in the Church, we need to act vigorously, both by supporting those who have been hurt and by working for better protections for the vulnerable. As is so often the case, the innocent end up bearing the burdens brought about by the misdeeds of others. In this we must learn from Christ, who suffered and died for us sinners.

There are some things that need to be done by individuals: those guilty of shameful deeds need to acknowledge them, to repent, to beg the pardon of those whom they have injured as well as the pardon of God. So, too, those who in any way enabled other individuals to perform such shameful deeds, whether by looking the other way, or by failing to report what they knew, or by failing to act on reports that they received, and even by advancing compromised individuals within the hierarchy of the Church. Because of the nature of the harm done, it will be crucial for those who did such shameful deeds or who were otherwise involved to make a public admission of their role, to be sorry and to express publicly their sorrow, and to accept the consequences.

This proposal is for the Church as a whole—at very least, the Church in this country. Even if we were not involved in such shameful conduct, we find ourselves as members in a Church marred by scandalous activity by some of its members. What might we do? We might now restore the practice of abstinence

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from meat on Fridays, and include with it at least some modest fasting. The idea here is to use an old Catholic practice, now often neglected—something that we could do as the body of the faithful. If we were to abstain from meat, as we used to do, and not simply replace it with some other fine fare but make this abstinence a time for fasting and prayer, we could be regularly mindful of undertaking the reparation for sin within the Church.

Among the values of a practice like this: it would be a practice done by members of the Church for the Church, begging God for forgiveness and for healing. We would be doing it together (insofar as our own health allows), and accompanying instructions could also include encouragement to act and to pray. Perhaps another benefit of such abstinence and fasting would be the encouragement that doing this would give to the development of certain virtues, including the virtue of temperance in moderating our own desires and the virtue of resilience for summoning the energy and commitment we need when we grow discouraged.

When undertaking such fasting, we need to acknowledge our own sins as well as the sins of other members of the body. Confessing our sins puts us in the right disposition to approach God with a humble, contrite heart. It also keeps us from the “I’m better than you are” sort of hypocrisy to which it is all too easy to be inclined. It points us to Christ and his redeeming sacrifice, for it acknowledges that human sinfulness can only be healed on the spiritual level.

There is admittedly something unusual about the suggestion that those not guilty, not responsible for this wrongdoing, should do penance, but it will seem unusual only until we think of the way in which Jesus took upon himself the sins of the world. At the natural level, the idea reminds me of the time in grade school when some prankster had done his prank. The teacher would be angry, but by an unspoken agreement no one would tell on anyone else. Often the whole class would then have to take a penalty. But the present case is actually quite different, and what is needed now is just the reverse. The problem here is precisely that some people who knew about the terrible harms that were taking place did not speak up when they should have. While we fast in reparation, we can also pray for the grace to speak up, lest evil triumph by our doing nothing. Let me now turn to a different but related topic.

2. A Time to Think and Act

Our ongoing sorrow over scandalous conduct in the Church cannot help but shape the way we see many other things today. How many times this summer and fall have the scriptures that the Church long before assigned for daily Mass have had a new resonance in light of our situation! Consider, as but one example, the readings for Friday of the Twenty-second Week (read this year on

September 7th). Considering them led me to write this column.

The passage from 1 Corinthians begins in this way: “Thus should one regard us: as servants of Christ and as stewards of the mysteries of God. Now it is of course required of stewards that they be found trustworthy. It does not concern me in the least that I be judged by you or by any human tribunal; I do not even pass judgment on myself. I am not conscious of anything against men, but I do not thereby stand acquitted; the one who judges me is the Lord” (1 Cor. 4:1-4).

We have heard these lines before, but the present situation invites us to hear them in a new register. First, we ought to be “servants of Christ.” We might well sympathize with the translator who somehow has to find an appropriate way to render *hupēretas* (in Greek, “seaman, laborers”). Translating it as “servant” could perhaps evoke the idea of an employee charged with care of matters personal and private. In Greek, the meaning of the term can reach even as far as “slave”—to our ears, a rendering that could evoke the idea of something shameful, the chattel servitude in which some people claimed to own people as if they were property.

If we allow its translation as “servant” (perhaps the least bad among the available options), we can then focus on its meaning in this context. It signifies that we really do belong to Christ and ought to do his bidding. He is not some cruel and oppressive master, but rather one whom we truly are to serve. It is a relationship not to be governed by the fear of lashes but with the fullness of a heart and mind ready to give obedience willingly and with all the energy and intelligence we can command. Paul shows us what it is to stand ready to devote one’s life to Jesus and to the Church, and, in fact, to be grateful for having been chosen to be among his disciples.

The next line confirms this interpretation: “and as ministers of the mysteries of God.” In the word *oikonomos* (literally in Greek, “household stewards”) and in its translation as “ministers” or “stewards” we have a term that suggests a very important kind of service: the preservation and accurate transmission of “the mysteries of God.” These mysteries include God’s disclosure of himself to us throughout the whole course of divine revelation and the sharing of his plan for our salvation by the life, death, and resurrection of Jesus. The mysteries include our acts of faith in Christ and our participation in the life of the Church. To the Church he entrusted the handing down of the Gospel as well as the dispensing of the sacraments he instituted as genuine sources of his grace.

The term “the mysteries of God” is Paul’s rich way of formulating a central object of the Church’s concern. It includes reverence for the gift of Christ’s ongoing presence in the world since his ascension and return to the Father. It

includes evangelization and the faithful handing on of all that has been revealed, especially by transmitting as fully and accurately as possible what Jesus said and did. It includes care for the faithful through the dispensation of sanctifying grace through the sacraments. The Church has wisely understood the term “the mysteries of God” to include all these things: the fullness of what God has revealed to us and of the ways God has established for us to participate in his plan for our sanctification.

When Paul emphasizes that we ought to be ministers or stewards of these mysteries, he is indicating that we are to preserve the knowledge of what God has revealed in Christ. What good stewards do is to preserve and to dispense: they must be careful to keep precious things safe from harm and loss, and they must be ready to give them to those who need them and who ought to receive them. The temptations that afflict stewards are, of course, many, including the temptation to be concerned about their own affairs and to let what they are supposed to care for be damaged or lost. Stewards are not to replace what they have been charged to care for and to preserve with something else when (for whatever their reasons) they deem the substitutes better.

Good stewards must not be indifferent about the things that have been entrusted to them. Stewards of the mysteries of God should never be careless with them or neglect them. They may not take it upon themselves to decide arbitrarily what they find relevant within divine revelation and what they deem irrelevant and want to discard as dated or no longer believable or offensive. They should not substitute something else for the sacraments that Jesus entrusted to them as his ministers. They should not de-emphasize some doctrine that has been disclosed in divine revelation that they find embarrassing or outmoded, but should trust to the judgment of Christ about what his people need.

Paul immediately draws an important conclusion: “Now it is of course required of stewards that they be found trustworthy.” It goes without saying that there is to be no embezzling or theft of the goods that have been entrusted to the steward. There is to be no failure in the distribution of those things that are genuinely good. Stewards will rightly be regarded as untrustworthy if they are lazy. They may not refuse to recognize their duties. They are not entitled to substitute their own judgments about what is good and to put these judgments in place of what the Master has determined. While we must grant the difficulty that ordinary stewards face in situations when their bosses get it wrong, that is not the case here. Paul is talking about being stewards of the mysteries of God, whose gift to us of Jesus Christ has provided us with one whose judgments are ever true and right.

When Paul goes on to assert that he stands in no fear of judgment, he is

testifying that he himself has done what a good servant must do. For this reason he has no fear of judgment by any human tribunal. The one who knows everything and who alone has the competence to judge him is the Lord. This is the position to which every one who accepts a commission to be a steward of the mysteries of God should aspire. Thankfully, in the history of the Church there have been countless ranks of good stewards who can speak the same way that Paul does here. They have lived out the duties of a good steward as Paul outlines them.

Interestingly, for several weeks running at this point in the liturgical year (from Sunday of the Twenty-fourth Week through Saturday of the Twenty-fifth Week) the Office of Readings gives extensive selections from St. Augustine's sermon on pastors (Sermon 46, 14-15: CCL 41, 541-42). A short while later (during the Twenty-seventh Week) we find St. Gregory the Great's sermon on the Pastoral Office, addressed to the bishops and clergy assembled at the Lateran Basilica (Migne, *Patrologia Latina*, vol. 76, col. 1138-1149). These writings provide a sustained reflection on what someone charged with authority in the Church ought to do as a minister of the mysteries of God.

But there are also those who have not lived as trustworthy stewards. It is precisely these bad stewards who need to be disciplined—not only those who are guilty of misconduct but also those who looked away or excused themselves despite the duties of stewardship that their positions in governance assigned to them. It includes those who were afraid to act on what they came to know and those who were indifferent to carrying out their duties responsibly. The problem is exacerbated in those with a tendency toward ecclesial antinomianism joined to authoritarian style of governance. For the restoration of trust in the Church it will be crucial to have a thorough-going review of the record as well as appropriate measures for disciplining those who failed in the stewardship entrusted to them, presumably along the lines that Cardinal DiNardo has outlined.

3. *A Time to Contemplate and Worship*

These reflections arose from meditating on the first reading at Mass on Friday of the Twenty-Second Week. Let us turn now to the Gospel of that day (Luke 5:33-39), for it too sheds light on our situation. It concerns the time when some Scribes and Pharisees asked Jesus why His disciples did not fast in the way that the disciples of John the Baptist did. Our Lord's answer is illuminating: his disciples, he tells us, do not fast while the Bridegroom—Jesus himself—is still among them, but he promises that they will fast when he has been taken away from them. He then uses various images to deepen his point. One should not try to patch an old garment with material cut from a new one, and one should not

put new wine into old wineskins, lest the skins burst and both wine and wineskins will be lost.

This is a reading with implications for many aspects of our Christian lives, but one of the revered ways in which it has been interpreted pertains to the liturgy. There will be seasons like Advent and Lent in which fasting is appropriate. In Advent we remember the long generations before Christ's coming, and in Lent we enter into the paschal mystery of his suffering and death. With Christmas and Epiphany we replace our fasting with feasting, and all the more so at Easter with the liturgical celebration of the completion of the paschal mystery through Jesus's resurrection.

The images that Jesus then employs have also been seen to have liturgical significance. Worship under the new covenant that Christ enacted as part of the paschal mystery has certain strong connections with the worship that was given under the old covenant, but there is also something truly new in the form of worship that he introduced for the new covenant. The first portion of the Mass is directed to confessing our sinfulness, asking God's mercy, giving him glory, and (as in the synagogue) hearing his word. There is both continuity and difference. Hence we continue to revere what was revealed before his coming in our reading of the Old Testament, and yet we must understand all of what had been revealed more deeply in Christ, and so we read the Gospels and the letters of the New Testament.

Like the practices of the Temple, the second part of the Mass involves thank-offerings and sacrifice, but again there is something truly new in Christ. God had already revealed to his people that there is no forgiveness of sins without the shedding of blood, but now with Christ there are no longer to be animal sacrifices. It is the sacrifice of Jesus on the cross that has replaced once and for all time all of these previous sacrifices. Our task is not to offer new sacrifices of our own, but to join ourselves to his one sacrifice.

This second portion of the Mass takes up but also transforms the way in which the Jewish liturgical practice rightly gave pride of place to the events of the Passover—the meal that his people were to eat in remembrance of the way God strengthened them for their journey and of their actual deliverance from servitude. For Christians, the Eucharistic prayer and the rite of Holy Communion allows us to enter into the events of the Last Supper, the Passion, and the Resurrection. Our liturgy allows us to participate in the sacrament of the Eucharist by receiving the Body and Blood of the Lord, as he directed us on Holy Thursday.

Consider for a moment how the liturgical resonances of a Gospel passage about fasting and feasting and wineskins and the patching of garments may have a special connection with the first reading in light of recent events. Problems of

sexual misconduct and the failures of authorities to act in ways truly authoritative are, sad to say, nothing new. One might wonder, however, if there is some connection between the way some ecclesial authorities mishandled cases of bad conduct and the way that the scandal of irreverent liturgical practices has not been adequately addressed.

The issue being raised here does not come from an objection to changes in the liturgy. Ensuring that there are appropriate forms of worship is the Church's duty, and we can only be grateful for the organic developments over the centuries that made the Church's liturgy so prayerful and so beautiful. But by any fair account of the history of the matter, there was a rush in the 1960s to make massive changes of a sort that had unforeseen and unintended consequences. In trying to reconstruct the mindset of those days, one can also ask whether the simple fact of changing some of the most sacred things of our religion—its liturgical practices—might have allowed—or even prompted—some people to think that long-standing teachings in morality, asceticism, and spirituality could be changed too. If things of the greatest moment can be altered, there can be a kind of tacit permission given altering things in other areas.

This topic is very delicate, and my intention here is not to put into question the introduction of the vernacular or the creation of the new forms of the Eucharistic prayer. The question posed here pertains to perceptions and tendencies. Even if there is no analytic connection between these topics, might there be a psychological or cultural one? It seems possible to imagine that even the perception of a need for changes in the Church's practices (e.g., on a disciplinary question like the language of the liturgy) can open the door for some people to consider changes of a radical sort. It is always hard to foresee the consequences of changes in policy and practice, but further reflection on these questions can help us to take the long view. Our guiding principle, I think, must be to have the wisdom of the Gospel permeate the practices of the culture, and to guard against having what passes for wisdom in a culture water down the wisdom of the Gospel.

By way of example, the excellent policy of directing priests regularly to devote their homilies to the much expanded range of scriptural passages used in the liturgy inadvertently meant that far less attention was given in sermons to questions of sin, the need for regular examination of conscience, and the importance of sacramental confession. We need not presume that there was any intent to diminish Catholic sensibilities about how offensive sin is to God, but it is easy to understand why both preachers and congregations are less focused on this topic when they never or rarely hear about it. Are we now seeing the fruits of so little attention being given in homilies to the offense that sins give

to God and the damage that they can do to ourselves and others?

The same sort of question could be raised about whether enough attention has been given to the Catholic understanding of the supernatural and the efficacy of grace in the sacraments. It has clearly been important to give attention to such topics as community and social ethics, but we need to ask whether there has been a proportionate reduction in the time available for talking about grace and supernatural life. As always, genuine Catholicism requires that we respect both areas and not lose what our tradition had done so well in the effort to address new concerns.

4. A Time to Read and Understand

Even before the most recent round of scandals, a book crossed my desk that deserves careful reading by members of the Fellowship: *Hurting in the Church: A Way Forward for Wounded Catholics* by Father Thomas Berg (Huntington, Ind.: Our Sunday Visitor, 2017).

A professor of moral theology at St. Joseph's Seminary (Dunwoodie) in Yonkers, New York and the vice-rector there, Father Berg provides an unflinching examination of various sad trends that have taken root within the Church and that have produced wave after wave of terrible hurt and deep pain. He joins to this analysis some sage advice about the steps needed for personal healing and the measures required for healing a hurting Church.

In the lengthy section devoted to describing the ways in which priests and other authorities have done wrong and caused scalding pain, he recounts the stories of many people he has come to know and exposes the way in which conduct at odds with a priestly or religious vocation has sometimes amounted to "soul murder"—that is, to a loss of faith in God as the result of the disgust and shock as the victim of someone's misconduct.

Fr. Berg also recounts other types of stories, using the telling subheading of "Where the Charity of Many Grows Cold" as a way of gathering and recounting the kinds of harm that come from failures to help people know the mercy of God. These include stories about people who tried to confess to abortion or infidelity and found highly judgmental confessors whose rage at the sin left the penitents feeling unforgiven and unforgivable.

Berg makes all the necessary distinctions so as to preserve a sense of scale and proportion (e.g., keeping in mind how small the actual number of predators is, and yet how terrible a problem it is that some have truly wounded others). His chapters on how to move toward personal healing show a great priestly sensitivity about reliable steps to take, including accepting help, learning to forgive, taking the time to let thoughts and memories heal (for there is no way to jump steps in the process), and making use of the rules for the discernment

of spirit to chart a way forward and to recognize signs of confirmation from God for one's choices.

What is particularly compelling about Berg's treatment is the way in which he shows how an integrated approach is needed. Some of what will be required is in the arena of psychological care, but that alone would be insufficient. There is need for real prayer as well as real friendship. Friendship with trustworthy people plays an immeasurably important role in healing, as does real, sustained prayer. It is a matter of letting Jesus heal us even while also accepting the methods of healing that come from professional disciplines like psychology. And some of the healing process that God has designed for the human psyche comes only with opening oneself up to others and letting their love and friendship play its vital role.

The final chapters of the book deal with what can be done to restore the shattered trust in the Church. It offers some very practical suggestions for protecting children and for safeguarding victims of sexual abuse. By recounting the story of Henri de Lubac, S.J., who was silenced for three years without an opportunity to defend himself, Berg exhibits a case of one whose response was tenderness toward the Church and not the retribution that some might have expected when his period of being silenced was lifted. For Berg, it shows the need to get beyond the position of "Jesus, Yes, but the Church, No?" – and the story shows the crucial importance of recognizing that Jesus founded the Church and gave it an indispensable role of the work of sanctification. Hence, the need to do all that we can to help the Church recover its holiness, and this means loving Jesus *and* the Church.

Another book that deserves the attention of members of the Fellowship is *Primal Loss: The Now-Adult Children of Divorce Speak*, edited by Leila Miller (Phoenix AZ: LCB Publishing, 2017). This important volume examines the faulty claims of the ideology of divorce. In the drive toward no-fault divorce, one repeatedly heard that kids are resilient, that parents who don't get along do their children no favor by staying married, that everyone has a right to be happy and that this must include the right to change sex-partners more or less at will. In short, the message was that divorce is relatively harmless to children and often beneficial to adults. These slogans were taken up by TV sitcoms, films, academic studies, public policy statements, the "style" sections of newspapers and magazines, therapists, and even clergy. But the declarations of none of these authorities made such slogans true, however often or firmly their assurances came.

The truth of the matter, as this volume shows, is that switching partners around regularly causes chaos in the family. Divorce does not necessarily solve the problems that people hope it will solve. As Miller shows, the likelihood of

divorce turns out actually to be higher for second marriages than for first marriages. Managing post-divorce conflict is a major part of the work of family law attorneys, and children simply do not just get over divorce—they are often sent for therapy, put on medications, suffer various symptoms, and all too often as adults feel that love is unreliable and have proven disinclined to make marriage commitments of their own.

The stories that Leila Miller has assembled give the adult children of divorce their voice. It is a voice that contradicts the layers and layers of propaganda issued over the years on behalf of the ideology of divorce. In addition to exposing the faulty claims of the movement that has tried to legitimize divorce, the book also contains wonderful stories of marital redemption—stories of apparently hopeless marriages that were brought back from the brink of divorce. These stories are not naive, for what they recount is the hard work, the prayer, and the recourse to professional help that can make a difference.

Von Hayek, Seventy-Five Years Ago

*Jude P. Dougherty**

THE RELEASE OF John J. Mearshimer's *The Great Delusion: Liberal Dreams and International Realities* brought to mind a short work written seventy-five years ago by the Austrian economist F.H. Hayek (1899-1992). Entitled *The Road to Serfdom*, the volume is perhaps more relevant today than when it was written.¹ The book is the result of Hayek's reflection on the socialist drift in Europe that facilitated the rise to power of Hitler, Mussolini, and Stalin. Written while the outcome of World War II was still uncertain, *The Road to Serfdom* may be fruitfully read as an historical review of the social and economic policies that prevailed during the first decades of the twentieth century. Yet, that was not Hayek's primary purpose in writing the book. It was issued as a prophetic warning. The socialist policies endorsed by our "progressive" intellectuals, he feared, are the same as those of the 1920s and 1930s that created National Socialism.

Hayek was not alone in his analysis of the past or in recognizing the danger that the emerging socialist parties posed for the future of Europe. Aleksandr Solzhenitsyn in *The Gulag Archipelago* (1973) and in his Harvard University commencement address said as much. Bertrand de Jouvenel, writing in France during the same period, produced a slightly different diagnosis of the events that brought the European dictators to power. De Jouvenel's book *On Power: Its Nature and the History of Its Growth* will serve a lasting reminder that politics is about power. "It is in the pursuit of Utopia," de Jouvenel writes, "that the aggrandizers of state power find their most effective ally, [for] only an immensely powerful apparatus can do all that the preachers of panacea government promise."² Hayek, much more than Solzhenitsyn or de Jouvenel, was engaged in a debate on economic planning that include Ludwig von Mises, Joseph Schumpeter, Michael Polanyi, Otto Neurath, Walter Schiff, and Karl Popper.

It is significant that the debate focused not so much on social policy per se as on the method to be employed in systematically arriving at a sustainable

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¹ *The Road to Serfdom* (Chicago: University of Chicago Press, 1944).

² Bertrand de Jouvenel, *On Power: The Natural History of its Growth* (Paris: Les Editions de Cheval Aile, 1945), available in many English-language editions.

social policy. The remarkable advances in the natural sciences in the late nineteenth and early twentieth centuries, particularly in theoretical physics, stimulated interest in methodological and epistemological issues normally discussed in the philosophy of science. The positivism of the Vienna Circle did not remain merely a philosophical outlook but began to have an impact in the social sciences. The methods that had proven successful in natural science were deemed applicable to the sciences of man. Economics was no exception. Positivism, by eschewing the metaphysical concepts of “nature” and “purpose in nature,” limited knowledge to sense experience, namely, to that which can be empirically verified, thereby reducing science to description and prediction. Lost was a sense of an unchangeable human nature, ordered to a divinely ordained end. The implications are manifold, as Malachi Hacoan in his biography of Karl Popper makes clear.¹

From the positivist’s viewpoint, what were traditionally recognized as rights are deemed mere concessions granted by the state or society. Given that rights are not natural rights but the product of law, they are not properly rights at all. They are mere concessions to claims that the individual makes and that the state recognizes. As such they can be withdrawn if the state deems such withdrawal in the interest of the general welfare. No one has stated this more clearly than the American political theorist John H. Hallowell. “There is a great difference,” Hallowell writes, “between freedom from unjust compulsion and freedom from illegal compulsion. When the test of legality, moreover, is ultimately conceived as the force behind law, freedom from illegal compulsion amounts to no more than freedom to do whatever the state does not forbid. This is a conception of freedom much more congenial to tyranny than to the preservation of the inalienable rights of man.”² Viewed from the perspective of positivism, the rights of man are no longer to be called “natural rights.” They are mere “legal rights.” Hallowell continues, “It was the liberal positivistic jurist long before Hitler who taught (explicitly or implicitly) that might makes right and that rights are not attributes which individuals have by virtue of their humanity; they are simply claims that the state may or may not choose to recognize. Unwittingly, it may be, such liberals prepared the way for Lidice and Dachau.”

Distancing himself from socialist planning, Hayek provides his own perspective on economic planning, that is, by showing how a market economy

¹ For a valuable discussion of the impact of the Vienna Circle, see Malachi Haim Hacoan, *Karl Popper: The formative Years, 1902-1945* (Cambridge: Cambridge University Press, 2000).

² John H. Hallowell, *Main Currents in Modern Political Thought* (New York: Henry Holt and Company, 1950), 289, 327.

is actually driven. Most of the knowledge necessary for running an economic system, he holds, is not in the form of scientific knowledge, that is, by a conscious awareness of the rules governing natural or social phenomena. More important is the knowledge that may be described as “intuitive in character,” idiosyncratic knowledge, consisting of dispersed bits of information and understanding relative to time and place. This tacit knowledge is often not consciously possessed by those who make use of it, and it is of such a nature that it can never be communicated to a central authority. The market tends to use this tacit knowledge as do individuals pursuing their own ends.

Ludwig von Mises made a similar point in a 1920 article entitled “Economic Calculation in the Socialist Commonwealth,” wherein he wrote:

In the absence of a capitalist market, production costs and commodity values could not be determined. A central planning board could neither measure costs nor determine prices. Prices reflect not inherent but changing human preferences; they provide producers and distributors necessary information for planning production and distribution. It is precisely in market dealings that market prices are formed, taken as the basis of calculation for all kinds of goods and labor. Where there is no free market, there is no pricing mechanism: without a pricing mechanism there is no economic calculation.¹

Like Hayek, Karl Popper was a student of von Mises. From the start he was critical of the Vienna Circle, but in his early years he could be described as a heterodox socialist. In his biography of Popper Hacoan tells us that, upon reading *The Road to Serfdom*, Popper’s progressivism was badly shaken. In a letter to Hayek, Popper called it “one of the most important political books I have ever seen.”² To another correspondent he wrote: “[Hayek] has seen very much sharper than I have that socialism itself leads directly to totalitarianism.”³ In his autobiography, Popper discloses that he would have remained a socialist had not Hayek shown him that socialism puts liberty at risk. In Hacoan’s judgment, it was also mass support for fascism that gave Popper pause. Eventually, Popper came to the conclusion that the paradox of democracy was real: “if the majority was sovereign, then it could decide that it no longer wished a democratic government. It could, as a third of the German electorate did, vote the fascists to power.”⁴

It is worth remembering that both Hayek and Karl Popper, though universally recognized as social theorists, were initially interested in

¹ Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahana (New York: Macmillan, 1900).

² Hacoan, 485.

³ *Ibid.*, 485.

⁴ *Ibid.*, 507.

epistemological issues normally encountered in the philosophy of science. In fact, when Hayek arrived at the University of Chicago, he offered a faculty seminar of the philosophy of science attended by some of the most notable scientists of the time, including Enrico Fermi, Sewall Wright, and Leo Szilard.

In *The Road to Serfdom* Hayek concedes that socialism, considered in the abstract, may not inexorably lead to totalitarian rule, but experience shows that the unforeseen and inevitable consequences of social planning do create a state of affairs in which, if its policies are to be pursued, totalitarian forces will get the upper hand. Ironically, socialism can be put into practice only by methods of which socialists disapprove. Hayek's book is concerned mainly with protecting liberty from the seemingly unstoppable trend in Western democracies to subject their national economies to central planning, which he claims evidence shows will inevitably lead to tyranny. Even a strong tradition of political liberty, Hayek warns, is no safeguard. The democratic statesman who from the loftiest of motives sets out to plan economic life will soon be confronted with the alternative of assuming dictatorial power or abandoning his plans. In short order he will have to choose between disregard of ordinary morals and failure. Hayek is convinced that the unscrupulous and uninhibited, lacking any principle to constrain their activity, are likely to assume positions of authority. Under their leadership, the moral views that initially inspired the collectivist state are not likely to prevail. The general demand for quick and determined government action will lead to a new morality and the suppression of democratic procedures. Given dissatisfaction with the slow and cumbersome course of constitutional procedures, the man or the party that appears the strongest and seems the most resolute in getting things done will create a new moral tone.¹

In a planned society it is not merely a question of what the majority of people agree upon but what the largest single or homogeneous group agrees upon. It takes such a core group with like-minded goals to make unified direction possible.² Such a group, Hayek believes, is not likely to be formed by the best elements of society. In general, the higher the education and intelligence of individuals, the more their tastes will differ and the less likely they are to agree on a set of ideas. "If we wish to find a high degree of uniformity and similarity of outlook, we have to descend to the regions of moral and intellectual standards where the more primitive and 'common' instincts and truths prevail." Hayek is convinced: "The largest groups of people whose values are similar are people with low standards." That said, if a political dictator had to rely entirely

¹ *The Road to Serfdom*, 150.

² *Ibid.*, 152ff.

on those whose uncomplicated and primitive instincts happen to be similar, their numbers would scarcely give sufficient weight to his campaign. He will have to increase their numbers by converting more to the same creed, a principle that is frequently enunciated in the pages of the *Wall Street Journal*. The would-be ruler must somehow obtain support of the docile and gullible who have no strong convictions of their own but who are prepared to accept a ready-made system of values if it is drummed into their ears sufficiently loudly and frequently. It will be those whose vague and imperfectly formed ideas are easily swayed and whose passions and emotions are readily aroused who will thus swell the ranks of the totalitarian party. Absent a strong bourgeoisie (middle class), the transition to a dictatorship may be easy, swift, and accomplished with complete legality.

Speaking of the mechanism by which power is achieved, Hayek notes that, where there is dissatisfaction with the policies of the ruling party, a skillful demagogue can weld together a coherent and homogenous body of supporters by calling for a new order. "It seems almost a law of human nature that it is easier to get people to agree on a negative program—on the hatred of an enemy, or on the envy of those who are better off—than on any positive task." Yet, pandering to the demands of a minority can lead to the dissolution of democratic governance, for democratic governance can work successfully so long as the functions of the state are limited to policies where agreement among the majority can be achieved. The price we have to pay for a democratic system, Hayek insists, is the restriction of state action to those areas where agreement can be reached. Government interference in the life of the citizenry, even for benevolent purposes, endangers liberty if it posits a consensus where none exists. Absent consensus, coercion becomes necessary.

Examining the wellsprings of the socialist mentality, Hayek believes that the desire to organize social life according to a unitary plan springs essentially from a desire for power, more so than a desire for the communal good. In order to achieve his end, the socialist must achieve power over others—a perennial allure, regardless of the objective. The success of socialist planning depends on the achievement of power over a reluctant citizenry. When economic power is employed as an instrument of political power, it creates a degree of dependence scarcely distinguishable from slavery. The separation of economic and political aims, Hayek insists, is an essential condition of freedom.

Throughout his long life, Hayek was to return time and again to themes first articulated in *The Road to Serfdom*, notably in the three volumes of *Law, Legislation and Liberty* (1973, 1976, and 1979) and *The Fatal Conceit: The Errors of Socialism*. In the latter, published when Hayek was eighty-nine years old, he professed to be an agnostic with respect to the existence and nature of

God, but he had no doubt about the classical and Christian origins of Western culture. He saw that with the eclipse of Christianity, Europe was losing its force for the good, “the moral high ground,” we may say. Using history to reinforce his claim, Hayek tells the reader:

The Greeks seem to have been the first to see the connection between private property and individual freedom. From antiquity to the present, no advanced civilization has yet developed without a government which saw its chief aim in the protection of private property. ‘Where there is no property, there is no justice’ is a proposition as certain as any demonstration in Euclid.¹

Why then do intelligent people tend to be socialist? Intelligent people, Hayek suggests, tend to overvalue intelligence, and to suppose that we owe all the advantages and opportunities that our civilization offers to bureaucratic design rather than to an inherited wisdom and traditional rules of behavior. Furthermore, the intellectual is likely to suppose that we can, by exercising our reason, eliminate any remaining undesired features of our economy by still more intelligent reflection, and still more appropriate design, and rational coordination of our undertakings. This leads one to be favorably disposed to central economic planning and control that lie at the heart of socialism.² “How could,” he rhetorically asks, “the traditions which people do not like and understand, whose effects they usually do not appreciate, and can neither see nor foresee, and which they are still ardently combating, continue to have been passed on from generation to generation?” We owe to religion, Hayek concludes, that such beneficial traditions have been preserved and transmitted. Those traditions may be no more than “symbolic truths,” but it has been and remains the role of religion in society to preserve our moral traditions.³

One must conclude that even at the end of his life, Hayek had not fully escaped the positivism of August Comte and the Vienna Circle to which he had been exposed in his early years. Lacking a metaphysics, he remained confined to the phenomenal order of description and prediction. Still, like his mentor Ludwig von Mises, it is to his lasting credit that Hayek’s *The Road to Serfdom* convinced many an open mind that the main issue in social and political conflict is this: to what extent, in the interest of economic security, one should surrender freedom, private initiative, and individual responsibility to the guardianship of the socialist state.⁴

¹ *Fatal Conceit*, in *The Collected Works of F.A. Hayek*, ed. W.W. Bartley III (Chicago: University of Chicago Press, 1989).

² *Ibid.*, 32.

³ *Ibid.*, 54.

⁴ See Von Mises, “Preface,” in *Bureaucracy* (New Haven: Yale University Press).

Power and the Community of the Free

*Jude P. Dougherty**

SOME CULTURAL HISTORIAN OF THE FUTURE, some future Gibbon will record the decline and fall of a once great nation, how it lost contact with its founding documents and with the spiritual traditions that animated its growth, and how it succumbed to the siren song of utopian leaders who led it to its dissolution in a visionary multi-cultural, borderless, universal democracy.

As our nation faces a questionable future, we may turn to the past to determine in its light what the future portends. Yet as some cynic with reason once put it, “the only thing we learn from the past is that nobody learns from the past.”

An often neglected cultural historian is Bertrand de Jouvenel. His work *On Power: Its Nature and the History of Its Growth* remains timely even though it was written more than seventy years ago.¹ Penned during the dark days of the Nazi occupation of France, the book was published at first opportunity in 1945 and appeared in English translation five years later. Up against the raw power of the German occupation, de Jouvenel was led to reflect on the nature of power in the abstract. He set out to examine the way in which power grows in society. As he uses the word, it may stand for authority, the ruler, or simply the drive for dominance.

The Community of the Free is the title of a work by Yves R. Simon, a French contemporary of de Jouvenel. Both were in their early thirties when they witnessed Hitler’s rise to power. At the outbreak of the war, Simon was a visiting professor in the United States. Remaining in America, he taught philosophy at the University of Notre Dame during the war years, and eventually became a member of the Committee on Social Thought at the University of Chicago. From his vantage point in America, Simon (like de Jouvenel in France) surveyed the ruins of Europe and in his own way addressed the conditions that brought it about.²

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¹ Bertrand de Jouvenel, *On Power: Its Nature and the History of Its Growth*, with a Preface by D. W. Brogan, trans. J. F. Huntington (New York: The Viking Press, 1949).

² Yves R. Simon, *The Community of the Free*, translated from the original French by

On Power can be read at different levels: as history, as prophecy, as political theory. Pierre Manent speaks of de Jouvenel's "melancholy liberalism." Given de Jouvenel's sweeping command of history, he can make a case for every judgment or argument that he advances in the book by citing numerous historical examples in support, yet his personal experience of Hitler's rise to power in the 1930s cannot be discounted as a coloring factor. The book is a plea for repeated stock taking, for a careful scrutiny of every post-war proposal that would redeem the past by extending the power of the state. Do not leap into the dark, he cautions his countrymen. Beware of letting "necessity," the tyrant's plea, have its way. Politics are primarily about power. He writes: "It is in the pursuit of Utopia that the aggrandizers of state power find their most effective ally. Only an immensely powerful apparatus can do all that the preachers of panacea government promise."¹ History shows that the acceptance of all-embracing state authority is largely the result of the fatigue and despair brought about principally by economic disorder. The European may say that liberty is the most precious of all things, yet as the experience of France attests, it is not valued as such by people who lack bread and water. The will to be free in time of danger is easily extinguished. Liberty becomes a secondary need; the primary need is security.

One of the pitfalls of democracy is its lack of accountability. The popular will is easily manipulated. It recognizes no moral authority outside itself that possesses the strength to limit its excesses. The dethronement of the old faith to which the state was accountable left an aching void in the domain of beliefs and principles, allowing the state to impose its own. Without accountability, democracy because of its centralizing, pattern-making, absolutist drive, can easily become an incubator of tyranny. The kings of old, the personification of power, were possessed of personality, possessed of passions good and bad. More often than not, their sense of responsibility led them to will "the good" for their people. Power within a democracy, by contrast, resides in a faceless and impersonal bureaucracy—the deep state, we call it now—that claims to have no existence of its own and becomes the anonymous, impersonal, passionless instrument of what an elite presumes to be the general will.

Writing in France when the Roosevelt administration was barely ten years old, de Jouvenel feared the long-range danger posed by the many regulatory commissions created by that administration. He saw that agencies possessing at once legislative, executive, and judicial control could operate largely outside of public control and become tyrannical.

Willard R. Trask (Lanham, MD: University Press of America, 1984).

¹ Paraphrased by D. W. Brogan in his Preface, xvi-xvii.

The extension of power, which means its ability to control ever more completely a nation's economy, is responsible for its ability to pursue ephemeral goals. De Jouvenel asks, "Can anyone doubt that a state which attempts to satisfy every need will be better placed to conscript all beneficiaries, and one day consign them to the dooms of war? The more departments of life that Power takes over, the greater will be its material resources for making war."¹ Even within a democracy the vast resources of the state are ripe for a dictator to seize. The bold, by discounting all risk, are positioned to seize all initiatives and become the rulers, while the timid run for cover and security. "The more complete the hold which the state gets on the resources of a nation, the higher, the more sudden, the more irresistible, will be the wave in which an armed community can break on a pacific one.... It follows that, in the very act of handing more of ourselves to the state, we may be fostering tomorrow's war."²

In his *Politics* Aristotle reduced the variety of governmental structures that he had studied to three: monarchy, aristocracy, and democracy. He recognized that whatever shape a government takes, the essence of governing is power. Force may establish power, but once established, habit alone can keep it in being. A standing center of power which is obeyed by habit has, in the case of the state, the means of physical compulsion and is kept in being partly by its perceived strength, partly by the faith that it rules by right, and partly by the hope of its beneficence. The natural tendency of power is to grow. Power is authority, and authority enables the expansion of authority.³

Power, when dedicated to egalitarian pursuits must always be at war with industrial authorities and ready to despoil the capitalists of their accumulated wealth.⁴ Its political objective consists in the demolition of a class that enjoys "independent means," by seizing the assets of that class to bestow benefits on others. The result is a transfer of power from productive individuals to an unproductive bureaucracy that becomes the new ruling class, displacing that which was economically productive. The top state authorities, in alliance with the bottom (that is, the supposedly oppressed), squeeze out the middle class and in doing so progressively penetrate ever deeper into the personal lives of citizens. The point of course has been made by others, notably by F.A. Hayek, who called attention to the fact that an assault on property rights is not always apparent because it is carried out in the name of the common good, an appealing but elastic concept defined by those whose interest it serves.

De Jouvenel subsequently makes the point that to achieve its objective;

¹ Ibid., 12.

² Ibid.

³ Ibid., 157.

⁴ Ibid., 171.

Power must first gain control of public education at its early stages. A state monopoly in education has the ability to condition minds in childhood for its later years, thereby preparing popular opinion for the seizure of even greater power by the state.¹ De Jouvenel did not experience or speak to the issue of men of great wealth, such as Jeff Bezos's purchase of *The Washington Post*, to advance a social agenda by controlling the flow of information.

Viewing the history of his country, de Jouvenel finds that France, disliking the minority rule of one person, deposed the Crown and subsequently organized itself in the light of mass interests only to discover that when the majority holds power over a minority, justice within a democracy can be as elusive as it is in a despotic regime. What de Jouvenel thought as possible has in many ways come to pass as Brussels gains ever more power over the European economy, and as the United States experienced a charismatic community organizer with few credentials and little respect for the traditions of the country he became elected to serve.

Let us turn now to Yves Simon's *Community of the Free* and the work of others who emphasize the role of private property in fostering independence of a powerful state. Simon was a student of Jacques Maritain at the Institute Catholic de Paris. The author of such books as *A General Theory of Authority and Freedom and Community*, he was influenced by Maritain but also by Pierre Joseph Proudhon's forceful treatise, *What is Property*.

Like Proudhon, Simon was fearful that democracy, far from excluding a totalitarian regime, would in time actually give way to one. Absent appropriate checks and balances, the legal processes of the democratic state may work in such a way as to allow the elimination of democracy. Of equal importance to whatever checks and balances may be prescribed by law or inscribed in a constitution, are those things that are in a sense external to the political structure, namely, private property and independent management of resources. "When people acquiesce to the removal of all checks on the conquering expansion of the state, the totalitarian regime is firmly established."

Simon was convinced that an impersonal authority could not win such an irrational surrender but that a leader with charismatic talents could win approval.² We know from experience, he says, that where totalitarianism prevails, democracy has no chance, yet few men dare to voice the paradoxical consideration that democracy may become totalitarian. Totalitarian democracy, of course, would not be true democracy.³ Proudhon maintains that the state,

¹ Ibid., 11.

² Simon, op. cit., 149.

³ "The real question is whether democracy can lead to totalitarianism, whether a democratic regime can develop into a totalitarian regime, whether the democratic state may

whether democratic or not, remains the state and of its very nature threatens all liberties and the very life of society.

Both Simon and de Jouvenel were concerned that in a democratic regime, the general interest as represented by power may determine that no interest is legitimate that opposes the general interest. On this assumption, even local or particular interest must yield to the general interest, in de Jouvenel's words, "bend its knee to power." Power, which is conceived as the incarnation of the general wish, cannot tolerate any group which embodies less general wishes and interests.¹

The distinguished American historian, the late Richard Pipes, a former director of Harvard's Russian Research Center and a specialist in Russian history, reinforces de Jouvenel's judgment that democratic procedures in electing government officials do not guarantee respect for individual rights. The right to property, he holds in his book *Property and Freedom*,² may be more important than the right to vote. Property of itself does not guarantee civil rights and liberties, but, historically speaking, it has been the most effective device for ensuring both. Property has the effect of creating an autonomous sphere on which, by mutual consent, neither the state nor society can encroach. In drawing a line between the public and the private sphere, it makes its owner, as it were, co-sovereign with the state.

Even so, once "the elimination of poverty" becomes a state objective, the state is bound to treat property not as a fundamental right that it has an obligation to protect but as an obstacle to "social justice."³ Even in the most advanced democracies, the main threat to liberty may come not from tyranny but from the pursuit of socialist objectives. Liberty by its very nature, Pipes reminds us, is in-egalitarian. Men differ in strength, intelligence, ambition, courage, perseverance, and all else that makes for success. There is no method to make men both free and equal. In the pursuit of equality, property rights may be subtly undermined through taxation and government interference with business contracts as the state pursues its egalitarian objectives. Insofar as poor voters always and everywhere outnumber rich ones, in theory there are no limits to the democratic state's drive to promote equality and to run roughshod over the rights of private property. "The rights to ownership," Pipes argues, "need to be restored to their proper place instead of being sacrificed to the unattainable ideal of social equality and all-embracing economic security.... The balance between

happen to work in such a way as to bring about the elimination of democracy and the establishment of totalitarianism" (Simon, p. 150).

¹ De Jouvenel, op. cit., 261.

² Richard Pipes, *Property and Freedom* (New York: Alfred A. Knopf, 1999).

³ Pipes, 229.

‘civil’ and ‘property’ rights has to be readdressed if we care about freedom.”¹ He continues, “The Civil Rights Act of 1964 gave the government no license to set quotas for hiring personnel by private enterprise or admitting students to institutions of higher learning, and yet the federal bureaucracy acts as if it had.”²

Some fear that the drive for “social justice” will inevitably lead to the destruction of democracy, yet Pipes is not drawn to that pessimistic conclusion. He reasons that encroachments on property cannot advance relentlessly to their logical conclusion, the abolition of private property, because the most affluent are twice as likely to vote as the weakest. If he were addressing the subject today, nearly two decades later, he may not be so sanguine. The prospect of government control of all aspects of the electoral process looms as the present Democratic Party, aided by a leftist media, is now positioned to mobilize the vote through redistricting and by taking direct control of the census. Not to be discounted is the distorting effect of a monolithic media able to advance its own political agenda in concert with officials who share its objectives.

De Jouvenel addressed this issue when speaking of the ability of popular newspapers to awaken emotion, building or destroying concepts of right conduct. “From the day the first ha’penny paper was launched until now, the big circulation newspapers have never built up an ethic.”³ In concluding paragraphs of his study, de Jouvenel writes, “It is impossible to condemn totalitarian regimes without also condemning the destructive metaphysics which made their happening a certainty.”⁴ Rhetorically he asks, “What would the individualists and free thinkers of the eighteenth and nineteenth centuries say if they could but see what idols a man must now worship: would not the superstition they fought seem to be the very acme of enlightenment, compared to the superstitions which have taken its place?”⁵ No wonder Pierre Manent called him a “melancholy liberal.”

¹ Ibid., 287.

² Ibid., 288.

³ De Jouvenel, 373.

⁴ Ibid., 377.

⁵ Ibid.

Book Reviews

Leo Severino, *Going Deeper: A Reasoned Exploration of God and Truth*. San Francisco: Ignatius Press, 2017.

Reviewed by D. Q. McInerney, Our Lady of Guadalupe Seminary

In this spirited little book, addressed to a general audience, Leo Severino leads us through a short course in basic metaphysics and natural theology. Because the book is devoted to uncovering, through a pattern of systematic reasoning, the truth regarding the most important of matters, it is quite apt that it should begin by confronting head-on the stance of the extreme skeptic, who tells us that there is no truth. This claim, however repeatedly and bravely made, can easily be exposed for its complete incoherence. In making it the skeptic is unavoidably relying on the very thing he is denying, for, of course, he wants “there is no truth” to be accepted as true. One is reminded of Aristotle’s pointed argument where he shows that it is not possible to deny the principle of contradiction without in the very process affirming it.

Efficient causality is one of the principal concerns of metaphysics. Things do not just happen; they are made to happen. A leaf falls from a tree. This simple event has behind it a lengthy series of causes that, if we choose perseveringly to trace them, will eventually lead us back to the First Cause, the source and ultimate explanation for all that is and all that happens: trees, their leaves, and the falling of their leaves. Any series of efficient causes must terminate in the First Cause—a cause that causes all but that is itself uncaused. To ask what caused the First Cause, as some modern intellectuals do, is to show themselves to be babes in the woods as far as metaphysics is concerned. And it is no good to appeal to an infinite regress of caused causes, for that leaves us with no explanation for the supposed infinite series. Where did that come from?

There are some, like Lawrence Krauss, who contend that a universe can emerge out of nothing, but that is no more than playing with words to capture the attention of an audience that is under the hypnotic sway of scientism. Not surprisingly, as we discover from his book, Professor Krauss’s “nothing” turns out to be something after all. To assert, as some have done (Spinoza would be a case in point), that the First Cause causes itself is absurd, as St. Thomas Aquinas points out, because for any being to cause itself it would have to exist before it existed in order to bring itself into existence.

Metaphysics is the most comprehensive of the philosophical sciences in that it takes into account all being, whatever exists in any way whatever.

Material being is moving being, changing being (*ens mobile*), and as such it is totally time-bound, for time is simply the measure of motion according to before and after. Immaterial beings such as angels transcend time, and the First Cause does so preeminently, which is to say that he is eternal. We might be inclined to say that God is in eternity, but St. Thomas Aquinas thinks it more accurate to say simply that God *is* eternity.

The book follows the pattern laid down in the early pages of the first part of the *Summa Theologiae*. After demonstrating the existence of God, St. Thomas discusses various of his attributes. In the first ten chapters of *Going Deeper* we have presented a series of arguments that show the First Cause is one, uncaused, omnipotent, the creator of all things, immaterial and indivisible (because simple), not subject to time and space, omnipresent, and the supreme Intellect in that he knows all things. The book then demonstrates that divine knowledge implies divine love, for knowledge and love are inseparable.

Since the so-called Enlightenment of the eighteenth century, Western philosophy has become progressively godless as it succumbed to the lures of positivism and naturalism, to the point where, in the existentialist movement of the twentieth century, we were taught to believe that life is absurd and that we live in a meaningless universe. But as Leo Severino astutely points out, the advocacy of meaninglessness runs into the same kind of conceptual difficulty as does the claim of the extreme skeptic regarding truth. “Meaningless” is obviously a negative term; the basic principle to be pointed out regarding any negative is that it depends upon and is intelligible only in relation to the positive, as is especially evident in mathematics. If there were no positive numbers, negative numbers would make no sense and would in fact be impossible. The very concept of meaninglessness rests solidly upon the concept of the meaningful. If I say, “that has no meaning” (that is, it is meaningless), I necessarily make reference to something that is positive (namely, meaning) by claiming that it is lacking in that to which I am referring. You cannot have one (“meaningless”) without the other (“meaning”). To put it differently, “meaningless” is meaningless without meaning.

In pointing out that all agents act for the sake of an end, Aristotle was calling attention to what he regarded as an obvious fact of nature. To be an agent is to be an actor, one who acts, and to act is to order oneself toward the achievement of a specific end or purpose. To suppose that there can be an act without an end or purpose is unintelligible. Human beings are markedly purposeful creatures. We act to achieve things, to get things done. There are certain philosophers who would be readily prepared to admit as much, but then they make the sweeping claim that human life itself is purposeless. This will not wash. We ourselves, of course, are very much included in the “all things” that

follow upon the created action of the First Cause. God is the Alpha from which we come and the Omega to which we are ordered. He is, we may say, the Supreme Purpose of our lives that lends meaning to all the other purposes we pursue. All this the book makes abundantly clear.

In the last several chapters of *Going Deeper* Severino, following a common practice of natural theology, deals with several issues that have often been raised as seemingly calling into question God's goodness and providence, especially the perennial and tenacious problem of evil. In noting the two forms that evil takes in the world, ontological evil and moral evil, we acknowledge that by far the more serious is moral evil, which has its source in human beings who are possessed of freedom of will. God could have created a world without moral evil, but that would have meant a world of creatures possessed of intellects but bereft of free choice—strange creatures indeed, for they would be incapable of loving the very source of their being. If love is anything, it is a quintessentially free act of the human will. Love of God is the greatest act of our free choice, but with true freedom there is introduced the real possibility of evil, for we can choose to turn away from God. The possibility of evil, it seems right to say, is the unavoidable concomitant of our freedom. Would we be truly free if we could choose only the good?

One of the standard arguments trotted out by atheists since time immemorial rests upon the false dilemma that God cannot be both all-powerful and all-loving. Here is the argument as the atheist states it. It begins with the incontestable statement that there is evil in the world. Now, if God is all powerful, then he would do something about that evil, but he does not, and therefore he is not all-loving. If he is all-loving, then he would do something about that evil, but he does not, and therefore he is not all-powerful. This argument, though superficially logically sound, is in fact radically flawed. Both of the conditional propositions stated in the argument (the major premises) are fallacious because the consequents do not follow necessarily from the antecedents. Also, the minor premise in the argument (that God does nothing about the evil in the world) is totally unsubstantiated; in fact, is frankly false.

God knows all things. He knows exactly what I will do tomorrow afternoon at 3 p.m. Does not that effectively negate my free choice? If God knows what I will do before I do it, is not his knowledge coercive? Does not God's foreknowledge determine my will? "Foreknowledge" is a misnomer, for it assumes that God thinks in temporal terms. God, in his eternal now, knows what I will do tomorrow afternoon at 3 p.m., but what he knows is not simply that I will act, but how I will act, that is, *freely*. God's knowledge does not cancel my freedom; it contains it.

One of the especially helpful features of this book is that each chapter ends

with a crisply stated recapitulation of the major points dealt with in the chapter. *Going Deeper* is written in a very accessible, familiar style, and for that reason it should prove especially attractive to young people. In fact, the book shows promise of being very beneficial to many.

Alasdair MacIntyre, *Ethics in the Conflicts of Modernity: An Essay on Desire, Practical Reasoning, and Narrative*. Cambridge: Cambridge University Press, 2016.

Reviewed by D. Q. McInerny, Our Lady of Guadalupe Seminary

“The overall aim of this enquiry,” Alasdair MacIntyre writes, is “to understand more adequately the part that our desires and our practical reasoning play in our lives and in their going well or badly” (165). In the preface he gives a description of the line of reasoning which will constitute the main philosophical thrust of the book: “My argument is designed to show that it is only from a Thomistic Aristotelian perspective that we are able to characterize adequately some key features of the social order of advanced modernity and that Thomistic Aristotelianism, when informed by Marx’s insights, is able to provide us with the resources for constructing a contemporary politics and ethics, one that enables and requires us to act against modernity within modernity. Its conclusion is that a certain kind of narrative is indispensable for understanding the practical and the moral life” (xi).

The book has five chapters, the first of which provides detailed and thorough analyses of the concepts of desire, goods, the good, and how they relate to one another. Chapter 2 treats of ethical theory and practice in terms of their social contexts, while chapter 3 is devoted to a discussion of morality specifically as it relates to modernity. Chapter 4, in a way the centerpiece of the book, makes a commanding case for the NeoAristotelian Thomism to which MacIntyre is committed. The final chapter is devoted to narrative and is composed of the specialized biographies of four significant modern individuals whose lives and actions are analyzed in light of the principles developed in the foregoing chapters.

Desire is that sense appetite (passion, basic emotion) that follows immediately upon love, the most basic of the sense appetites. If we love something, perceive it as good, we want to possess it, in one way or another. Our desires, being the elementary motivating powers that they are, shape and direct the entire course of our lives. It is of the utmost importance, then, that we reflect seriously on our desires, question them, treat them philosophically, as it were. But in terms of what philosophical perspective? It would have to be one that will

enable us to recognize that “our desires are both intelligible and justifiable only if we have good reason to act so as to satisfy them” (10). Desire, or any emotion for that matter, if not directed by right reason, will lead us astray: “lives go wrong because of misdirected desires” (12). A desire is misdirected because of our antecedently mistaking a *bonum apparens* for a *bonum verum*. We are liable to make that mistake if we are under the sway of the ethics of expressivism (sometimes known as emotivism), the origins of which can be attributed to Hume, and according to which the identification of goods depends finally on personal preference, on feelings. Expressivism regards reason and desires as opposed and overcomes the opposition by effectively ignoring reason and opting for emotion. What we have in this ethics is a radical subjectivism, individualism run rampant. In expressivism there is “no such authoritative standard, external to and independent of the agent’s feelings, concerns, commitments, and attitudes to which appeal may be made” (23). Moral norms that transcend the world of the individual play little or no role for the agent in making ethical judgments.

Expressivism, as a philosophical point of view, if true, can only give rise to “irresolvable disagreements” (24), for if the good is determined by isolated personal preference, there is no place for a common good, a good recognized by all moral agents who think and act rationally. The remedy for the many debilitating weaknesses proper to expressivism is the moral philosophy developed by Aristotle and St. Thomas. “If the NeoAristotelians are right, then there is a truth waiting to be discovered both about how it is good and best to act on particular occasions and about how in general it is good and best to live out our lives” (31-32). “By contrast on an expressionist view there is no such truth waiting to be discovered” (32). Given Aristotle’s teleological perspective, for him a human life without a consummating final end would be unintelligible. That final end “must be the end of rational activity as such, an end to be contrasted with those various and particular ends,” and “that completes and perfects the life of the agent who achieves it” (53). It is through the practice of the virtues that the final end is achieved.

Aristotle called the final end *Eudaimonia*, while St. Thomas named it *beatitudo*, neither of which is best translated as “happiness,” if we accept what is today the dominant understanding of the term. MacIntyre has some very interesting countercultural things to say about happiness and how it relates to our moral lives, among which is the arresting point that happiness needs to be justified; we must have good reasons to be happy. If happiness is mere emotional contentment, feeling good about ourselves and about things in general, then that is “not a desirable state” (199). To be happy is to lead the kind of life “in which one’s powers, physical, moral, aesthetic, and intellectual are developed and educated so that they are directed toward achieving the ends of

a rational agent” (201).

MacIntyre gives considerable developed emphasis to the thesis that the theory and practice of ethics can be perfected only within various social contexts—the family, the workplace, the school, the polis. Whatever the particular social context in which we find ourselves, we must be sensitive to the primacy of the common good. We must also be aware of the deleterious influences of modern culture, so as not to be morally damaged by them. “We therefore have to live *against* the cultural grain, just as we have to learn to act as economic, political, and more antagonists of the dominant order” (238). MacIntyre advocates an asceticism of sorts, by which we free ourselves “from attachment to those objects of desire that bind one to one’s social role, desires for success, pleasure, and reputation” (112).

He sees that there are certain aspects of the thought of Marx (especially as found in the first chapter of *Das Kapital*) that are supportive of the Aristotelian Thomistic position, and he contends that we can learn from Marx precisely because Marx learned from Aristotle. Using Marx’s notion of “surplus value” as his point of departure, he offers thoughtful critiques of capitalism and market economics, emphasizing the ways in which they work against the implementation of the ethical principles that he is defending. His chief criticism of the economic theory that governs modernity, and which reigns supreme in academic circles, is its notion of what it means to be a rational agent – “to be a consistent maximizer of preference satisfaction” (102). Here we have expressivism as manifested in the economic realm.

A key feature of the book is its description and detailed critique of the specific morality that governs and shapes modernity. The principles fostered and propagated by its professional advocates are directly antithetical to the Aristotelian Thomistic position. “It is important that there is no place within their conceptual scheme for such Aristotelian and Thomistic notions as those of end, a common good, or the natural law” (98). Among this morality’s principal characteristics is that it is totally secular, makes no appeal to transcendent precepts, and considers itself to be superior to all other moralities. Its influence is pervasive and dominating. “To be successful,” according to the egocentricism it fosters, “is to compete in such a way that it is one’s own preferences that are satisfied rather than those of others” (135).

MacIntyre cites Oscar Wilde, D. H. Lawrence, and the British philosopher Bernard Williams as noteworthy questioners of this view of morality. He pays special attention to the thought of Williams, who took D. H. Lawrence’s injunction, “Find your deepest impulse and follow that,” as worthy of making it a guiding principle of his own ethical thought. Lawrence’s dictum could be fittingly translated as “let reason-free desire rule,” and Williams’s position

places him within the larger camp of expressivism. “Practical thought,” he wrote, “is radically first personal” (162). MacIntyre responds point by point to what Williams regarded as the faults of Aristotle’s philosophy, such as his commitment to teleology and his definition of man as a rational animal; he also believed that the Stagirite “is mistaken in thinking that there is any such thing as *the* good life for human agents” (222).

The “NeoAristotelianism as developed in contemporary Thomistic terms” (166) to which the book is devoted stands radically apart from the “me-centered” morality that is the hallmark of current modernity. The good toward which practical reasoning is directed is not equivalent to what an agent’s desires, unguided by reason, deem to be good, but that which is good for a human being precisely as rational, and it is a good that, in its overarching form, the individual has in common with all rational agents. Happiness is not the self-centered contentment that modernity takes it to be, but a state in which a rational agent, as such, has reached maturity. The exercise of the virtues, to which Thomism gives much emphasis, makes for “educated desires.” “To have the virtues is to be something quite other than a preference maximizer” (316). Thomistic moral philosophy can be called objective and realistic in that it accepts the fact that there are norms and standards that, rooted in the natural law, the universal moral law, are applicable to all, offering order and direction to human desire.

Alasdair MacIntyre has been identified as “the founding figure of the Narrativity camp” (240). The important role he assigns to narrative is one of the most interesting and original aspects of his ethical thought. The final chapter of the book is devoted to narrative, in the form of specialized histories of four personages who lived in modern times: the Soviet novelist Vasily Grossman; the American Supreme Court Justice Sandra Day O’Connor; the Trinidadian Marxist historian and political activist C. L. R. James; the Irish priest and activist Msgr. Denis Faul. These narratives are intended to show “the relationship of theory to practice and of desire to practical reasoning” (xi). The importance, for ethics, that MacIntyre attaches to narrative has to do with his “understanding of lives as ‘enacted dramatic narratives’” (239), a notion that he first introduced and developed in *After Virtue*. His argument is that “we understand both the vicissitudes of our desires and the course and outcomes of our practical reasoning in narrative terms” (242).

Such understanding is possible only because all human lives, contrary to what was held by philosophers like Jean-Paul Sartre, are in fact stories, have plots, are shaped by the Aristotelian beginning, middle, and end, are directed toward a finality that either is or is not consonant with the nature of a rational agent. The stories we tell of our own lives, if sincerely and honestly told, reveal

to us the quality of our practical reasoning. That reasoning would be sound to the extent that it reflects the principles found in an Aristotelian Thomistic ethics. The stories told by those whose lives have been guided by the ethics of expressivism, on the other hand, would be unavoidably defective. Narrative is not to be regarded as merely a decorative, nonessential addendum to ethical theory: for MacIntyre, theoretical understanding and narrative are inseparable.

While the principles put forward and masterfully developed in *Ethics in the Conflicts of Modernity* represent a necessary substitute for those fostered by the morality that governs modernity, MacIntyre is not especially optimistic about the possibility that the kind of reasoning about ethics found in NeoAristotelian Thomism will one day soon be prominent enough to cleanse the philosophical atmosphere that now effectively chokes any serious thought regarding the nature of man and his final end. If it should happen that Aristotelian Thomism regain a place in the sun as a prominent philosophical voice, it will be in good part because philosophy itself, as MacIntyre argues in his *God, Philosophy, Universities* (2010), ceases to become just another academic discipline, and adopts its proper role as the supervising science that brings order and a unifying context within which all the other legitimate sciences can intelligently relate to and communicate with one another.

John Loughery, *Dagger John: Archbishop John Hughes and the Making of Irish America*. Ithaca, NY: Three Hills, imprint of Cornell University Press, 2018. x + 407 pp.

Reviewed by Thomas W. Jodziewicz, University of Dallas

In the course of a rather eventful and very public life, an incident in 1857, briefly noted in this excellent and well-researched biography of Archbishop John Hughes of New York and discussed at greater length below, might not seem as significant as many of Hughes's more celebrated moments. There was, for example, his reaction to the church burnings in Philadelphia (1844) by posting armed guards outside New York's original St. Patrick's Cathedral. He was ready to meet force with force. There was his public oration on "The Decline of Protestantism and Its Causes" (1850). He boldly asserted, in the midst of a dark time of American nativism and anti-Catholicism, that the Roman Catholic Church was on a very specific mission: "Everybody should know that we have for our mission *to convert the world*, including the inhabitants of the United States" (218). There was his speech in the U.S. House of Representatives (1847) praising the American project of freedom. And later there was his 1862 mission to Europe on behalf of his good friend, Secretary of State William

Seward, and of President Abraham Lincoln, to make friends for the Union in the Civil War.

Nearer to home, Hughes had his battles with parish trustees. He fought with public authorities who were content with anti-Catholic curricula and who refused to offer any support to Catholic schools when they looked for a share of public monies. And he contested with Jesuits at St. John's College (an institution whose name was changed to "Fordham" in 1907) when they were not compliant with his wishes. The list of such episodes chronicled in this volume could easily be extended.

Born in Ireland in 1797, Hughes arrived in Baltimore in 1817 and made his way to Mount St. Mary's College, where he worked as a manual laborer and gardener and lived in a nearby log cabin. Despite having had only a few years in an Irish grammar school, Hughes convinced the grudging dean, Fr. John Dubois, to admit him as a student. Ordained in 1826, Hughes served as a priest in Philadelphia before being sent to New York. As the coadjutor to Bishop John Dubois, Hughes proved his mettle as an administrator and a vibrant pastor, not to mention as a ready combatant on questions of apologetics. He succeeded Dubois in 1842 and was consecrated as the Archbishop of New York in 1850.

The potato famine in Ireland had created a tidal wave of migration to the United States after 1847. Neither Irish nor any other Catholics were much welcome. Their ever-increasing presence in New York City met with an American nativism that had been gathering energy in the largely Protestant republic since the 1820s. The virulent anti-Catholicism of the Abolitionists added to the challenges that Archbishop Hughes faced as he addressed the problems of growing Catholic numbers, including the need for parishes, schools, and orphanages. There was a chronic lack of funds. He made six trips to Europe to beg for money, priests, and religious.

By the late 1850s efforts were underway to encourage Irish immigrants to journey west in search of new opportunities. On the evening of March 26, 1857, an impassioned priest-promoter was holding forth about the wonderful prospects for a new settlement in Nebraska to be named after St. Patrick. As Loughery relates:

When he decided that he had heard enough, a man bundled in a scarf and long coat in the front row of the balcony rose to present his objections. He disagreed, he wanted the audience to know—all of whom quickly recognized the impassioned speaker—with every syllable they had heard. The Irish were being sold a bill of goods. Life at this alleged haven would be unspeakably harsh, radically different from but no less painful than what they confronted in the city....

[Hughes] complained about writers who knew rather little of what they were talking about, well-intentioned but misguided bishops [the Bishop of Loras, Iowa, was squarely

in his sights], rapacious land speculators, the dangers of ethnic segregation and gullible immigrants.... [Hughes] buttoned his coat and departed the hall. Many audience members followed. [St. Patrick's did fail.] (269-70)

In one memorable moment, Archbishop John Hughes had demonstrated his rather forceful public person, his great love for his fellow Irishmen and their spiritual well-being, his daily benevolence, a profound sense of realism as to the hard work necessary to make it in an inhospitable America, and his usual capacity for self-promotion that was in equal parts selfless and self-regarding. His was a self-conscious courage in the face of ethnic and religious prejudices that proved an ugly, if not entirely new, reminder of the inequality deeply planted in the national soil.

In an epilogue subtitled "Legacy," Loughery offers an historiographical lesson on the project of writing about John Hughes. Lionized by several of those who knew him best (such as his secretary) in the years immediately after his death, Hughes has suffered mostly criticism in the latter part of the twentieth century. In *The Catholic Experience* (1967), for example, Andrey Greeley singles Hughes out

as little short of a thug and the originator of the unfortunate role of the American bishop as paternalistic protector of a flock unable to take care of itself in the midst of a hostile culture.

He was the anti-[John] Carroll, the anti-[John] England, the model of the prelate fundamentally at odds with his adopted country. His influence was a "major disaster," responsible for all Catholic reactionary opposition to progressive thought in the next century. He was a "fierce and terrible man." (342-43)

Loughery's well-considered account of the life and times of John Hughes undercuts shallow criticisms of this fiery Irishman. Loughery does not refrain from admitting Hughes's warts. For instance, he shared the rather unprogressive racial views of Abraham Lincoln and was late to weigh in on the problem of slavery. One winces at Hughes's personal and intellectual feuds with the "progressive" views of Orestes Brownson. But the first charge of an historian engaging with his sources is to lay out the historical context. This Loughery does:

What public legacy, though, is not mixed, what place in history not equivocal and subject to opposing perspectives and repeated change? What should interest and concern us is the life lived in its time.... An immigrant forced to leave his homeland.... He died having made a transforming mark on the society he entered that day in 1817, a spokesman for his faith—the most vocal and self-dramatizing of all his ecclesiastical peers—and an unrelenting opponent of religious bigotry, exploitation of the immigrant, and self-doubt. (348)

Richard Shaw, *The Gregorian Mission to Kent in Bede's Ecclesiastical History: Methodology and Sources*. New York: Routledge, 2018. 276 pp.

Reviewed by Joseph W. Koterski, S.J., Fordham University

This volume is a study of the source materials behind Bede's *Ecclesiastical History*, the text on which historians have long relied for their narrative of Christian Anglo-Saxon England. Taking as a test case the story of the Gregorian mission to Kent and the early history of the Church there, Richard Shaw here offers a systematic attempt to ascertain how reliable Bede's source materials were and to determine how much of his account was based on contemporary material and how much on later evidence. By his care in pursuing these methodological questions, Shaw is also in a position to offer his own critical assessment about what some scholars have alleged to be Bede's own agendas, deductions, and inventions. Shaw shares a certain sense that some passages in Bede reflect purposes of his own, but his method also gives him grounds for holding untrustworthy the notion that large portions of Bede's work simply derive from later traditions associated with Canterbury and advanced as part of its agenda.

Mindful of the scarcity of primary sources for this period, Shaw also makes an attempt to reconstruct the basic shape of documents now lost. At the same time, his careful analysis allows him to claim that Bede had access to a greater variety of source texts than had previously been realized. The results of Shaw's work illustrate what could be achieved for other portions of the *Ecclesiastical History* and for some other works of this period.

The material under study here comes from three sections of Bede's *History*: (1) the mission that in 596 Pope Gregory the Great gave to Augustine to preach to the people of England (I.23-33), (2) the experiences of Augustine and subsequent bishops such as Laurence, Justus, and Mellitus in carrying out this mission and establishing the Church in Kent (II.1-11 and 15-20), and (3) Bede's account of the see of Canterbury prior to the appointment of Archbishop Theodore (III.8, 14, 20, 29 and IV.1). For each of these sections Shaw outlines the sources that Bede had and what can be reconstructed of these texts on the basis of what Bede wrote. Shaw also identifies the points in Bede's narrative for which it is not yet possible to identify the sources.

This highly technical and well-researched book will make its mark in the field of scholarly study of seventh-century Anglo-Saxon England.

Books Received

- Sebastian Athappilly CMI. *The Delusion of Atheism*. Bangalore: Dharmaram Public, 2017. 88 pp.
- Robert I. Gannon, S.J. *The Poor Old Liberal Arts*. San Francisco: Ignatius Press, 2018 [1961]. 179 pp.
- Patrick Kenny, ed. *To Raise the Fallen: A Selection of the War Letters, Prayers, and Spiritual Writings of Fr. Willie Doyle, S.J.* San Francisco: Ignatius Press, 2018. 207 pp.
- Peter Kreeft. *Doors in the Walls of the World: Signs of Transcendence in the Human Story*. San Francisco: Ignatius Press, 2018. 127 pp.
- Leah Libresco. *Building the Benedict Option: A Guide to Gathering Two or Three Together in His Name*. San Francisco: Ignatius Press, 2018. 163 pp.
- George M. Marsden. *Religion and American Culture: A Brief History*. Grand Rapids, MI: Eerdmans, 2018. 280 pp. Paper.
- Fiorella Nash. *The Abolition of Woman: How Radical Feminism Is Betraying Women*. San Francisco: Ignatius Press, 2018. 234 pp.
- Eleanor Bourg Nicholson. *A Bloody Habit, a Novel*. San Francisco: Ignatius Press, 2018. 435 pp. Paper.
- Catherine O'Donnell. *Elizabeth Seton: American Saint*. Ithaca, NY: Cornell University Press, 2018. 552 pp. Paper.
- George William Rutler. *Calm in Chaos: Catholic Wisdom for Anxious Times*. San Francisco: Ignatius Press, 2018. 228 pp.
- Richard Shaw. *The Gregorian Mission to Kent in Bede's Ecclesiastical History: Methodology and Sources*. New York: Routledge, 2018. 276 pp.
- Mary Shivanandan. *The Holy Family: Model, Not Exception*. Glen Echo, MD: KM Associates, 2018. 361 pp.
- Edward Sri. *Rethinking Mary in the New Testament*. San Francisco: Ignatius Press, 2018. 298 pp.

Memorial Notices

Earl August Weis, S.J. (1923-2018), entered the Society of Jesus in 1941, ordained in 1954, solemnly professed in 1959. The Fellowship started in 1976, when Msgr. George Kelly made a cross-country trip to recruit support. Among those he recruited was Father Earl Weis of Loyola of Chicago, whom I had never heard of. Father Weis was never a prominent figure in the way some other of the founders were. But he personified good sense, wisdom, and charity, a crucial steadying hand for forty years.

Jim Hitchcock

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