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Reminder: Membership dues will be mailed out the first of the year and are based on a calendar (not academic) year.

THE PRESIDENT'S LETTER

Join Us in DC at Our Annual Convention in September

Friends:

First, let me invite you to join us in Washington, DC, at the end of September. I am excited about our superb program on "Science and Religion." Cardinal Donald Wuerl will celebrate an opening mass for us at St. Matthew's Cathedral, and Archbishop William Lori will receive the Cardinal O'Boyle Award at dinner Friday, September 23. So, we will be off to a great start, and the rest of the weekend has many fascinating panels and speakers (and of course, our banquet on Saturday night). Go on-line at www.catholicscholars.org to register for the convention and to reserve a hotel room.

Second, it was good to see the Supreme Court vacate (or, set aside) the decisions in lower federal courts upholding the HHS "contraceptive" mandate against the moral and religious objections of Catholic institutions and others. The decision was unanimous. It did not technically decide the legal issue (ie, does the Religious Freedom Restoration Act protect religious organizations that object to being forced into complicity in providing "services" they judge to be immoral?); rather, it sent the case back to the lower courts to re-consider in light of the concession by the Obama administration that contraceptives could be provided to those who want them without forcing religious institutions to participate. Practically, I think this will mean the issue is going to be "put on ice" until after the Presidential elections, and those elections will likely determine whether the issue will disappear or rear its ugly head in subsequent cases.

Finally, I hope you have been enjoying your summer, and I look forward to seeing you in D.C. in September.

Cordially,

William L. Saunders

ARTICLES

The San Jose Articles and an International Right to Abortion

by *William L. Saunders*
Senior Vice President and Senior Counsel,
Americans United for Life, Washington D.C.

INTRODUCTION

Abortion advocates are on a mission to establish an "international" right to abortion using "soft norms" under customary international law. Their ultimate goal is to weave, throughout the various sources of customary international law, language implying an international consensus that abortion is a necessary component of fundamental health that must be provided by states to their citizens. If national bodies, including courts, accept the notion that an international customary law right to abortion exists, those bodies could impose it upon their citizens.

To understand the dilemma, let us imagine the reversal of *Roe v. Wade*¹ from the perspective of a person who has faithfully participated in the March for Life² in Washington, D.C., each year in protest of *Roe*. In one day the U.S. Supreme Court announces it is reversing *Roe* and holds that a right to abortion cannot be derived from the words of the Constitution.³ It does not take much imagination to understand the joy this news would bring to the faithful marcher, whose decades-long protest has apparently borne fruit. But then, imagine the devastation the marcher would feel if the Supreme Court were to announce that, despite the reversal of *Roe*, a right to abortion nonetheless exists in the United States because abortion has been established as a human right under customary international law. Such an established right is the prize for which abortion advocates are working—a failsafe backstop for the day when the Supreme Court finally reverses *Roe*.

Nonetheless, since, as demonstrated below, the foundational human rights documents do not recognize a right to abortion, the burden of proof lies upon abortion advocates to establish that an unwritten right to abortion has come into existence. It is a burden they cannot carry.

THE ORIGINAL HUMAN-RIGHTS DOCUMENT: THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1948, the United Nations General Assembly adopted the "Universal Declaration of Human Rights" (hereafter, the "UDHR").⁴ The setting for the creation of the UDHR—considered by many to be the original human rights document—was the aftermath of World War II, the devastation of which followed too closely on the heels of the destruction wrought by the First World War. The "massive violations of human dignity" represented by those two wars spurred the formation of the United Nations, the purpose of which was to "establish and maintain collective security" in the post-World War II era and to declare that the "community of nations" would never again allow such "massive violations of human dignity."⁵

The preamble to the UDHR references the horrors of the Nazi regime and those of the Imperialist Japanese—"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind"⁶—as a preface to the notion that "human rights should be protected by the rule of law."⁷ The UDHR declares that freedom, justice, and peace in the world rely on the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family."⁸

Article 3 of the UDHR succinctly affirms the value of human life: "everyone has the right to life, liberty and security of person."⁹

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (hereafter, the "ICCPR") is a treaty intended to implement into law the rights recognized in the UDHR.¹⁰ A "declaration" like the UDHR has no binding legal effect; it is not "law."¹¹ Conventions like the ICCPR, however, as treaties, bind those nations that ratify them.¹²

Echoing the UDHR, Article 6 of the ICCPR

clearly affirms a legally protected right to life: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹³

TWO SOURCES OF PUBLIC INTERNATIONAL LAW: TREATY AND CUSTOM

The ICCPR represents one of the best known examples of one source of public international law—the treaty, which is a written agreement between nations. As a written document, nations can read a treaty and decide whether or not to be bound by its terms; then they can either ratify the treaty or try to renegotiate its terms.

By contrast, the second source of public international law, “custom,” is unwritten. Customary international law represents a “custom” among nations, or stated otherwise, a way of behaving or interacting by nations that, over time, becomes a pattern that all nations follow.¹⁴ Because this source of law is not found in a written and subsequently ratified agreement, it must be discerned by a court from evidentiary materials.

There are two schools of thought on how customary international law develops: the traditional view and the modern view. The traditional view requires (1) unanimity among the nations, (2) the existence of the practice over a long period of time, and (3) a high standard of evidence. The commentary of jurists and others has been recognized as evidence of “customary” international law. As the Supreme Court stated in its opinion in the case *Sosa v. Alvarez-Machain*:

[W]here there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the **customs and usages of civilized nations**; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, **not for the speculations** of their authors concerning what the law ought to be, **but for the trustworthy evidence of what the law really is.**¹⁵

However, there is a “modern” view of customary international law, relied upon by abortion advocates. I call this the “bold” position. The bold position does not require the existence of the practice over a long period of time. In fact, it asserts that customary international law can be found from a single UN meeting, since all

the nations are (theoretically at least) present (more about this below).¹⁶

CUSTOMARY INTERNATIONAL LAW AND THE EFFORT TO ESTABLISH AN INTERNATIONAL HUMAN RIGHT TO ABORTION

Abortion advocates are committed to establishing a right to abortion in international law. Since a treaty expressly guaranteeing a right to abortion is unlikely to ever be universally agreed to, and since the foundational documents by their express terms respect the right to life (and make no mention of a “right” to abortion), it is the second source of international law that provides an opportunity for abortion advocates to attempt to craft this “international right to abortion.” They do so by relying upon the “bold position” on customary international law.

A key tactic of abortion advocates is to weave throughout various human rights documents the notion that a right to abortion exists as a necessary component of what they term “reproductive health services.” (This will be explained in more detail under the section on “conference statements” below.) By inserting language that might be understood to imply a right to abortion into various UN documents, the abortion advocates create “sources” that they claim provide evidence of such a right in customary international law. Abortion advocates are attempting to create “soft norms” that eventually “harden” into binding law. (I will return to this point below.)

SOURCES THAT ABORTION ADVOCATES CLAIM SUPPORT A RIGHT TO ABORTION

A. Rapporteur’s Reports

Paul Hunt, who was a “special rapporteur” to the UN on the right to health, wrote the following in a 2008 report, titled *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights*:

Duties of Immediate Effect: Core Obligations

Also, a State has a core obligation to ensure a minimum “basket” of health-related services and facilities, including essential food to ensure freedom from hunger, basic sanitation and adequate water, essential medicines, immunization against the community’s

major infectious diseases, and sexual and reproductive health services including information, family planning, prenatal and postnatal services, and emergency obstetric care.¹⁷

The inclusion of “sexual and reproductive health services”—alongside food, water, and basic sanitation—among the minimum “basket” of health-related services that states are “obligated” to provide to their citizens, provides, under the bold position, “evidence” that can later be cited by pro-abortion advocates of an existing international right to abortion. (However, as we will see below, “reproductive health services” does not include a general right to abortion.)

B. Committee Comments

United Nations committee recommendations are a second example of a “preferred source” relied upon by abortion advocates to provide evidence of customary international law. Each UN human rights treaty contains provisions for the election of a committee, which is empowered solely to receive reports from signatory states and make advisory recommendations to them. Although by the terms of the treaty such recommendations are not “binding interpretations” (that is, they are not like judicial decisions), they provide an opportunity for abortion advocates (through pro-abortion members of such committees) to make pro-abortion assertions in those recommendations, which will later be cited as supporting an international right to abortion. This poses a real risk to the pro-life position because, increasingly, UN committee reports are cited by jurists, government officials, and activists *as if they were statements of international law* in order to pressure governments to change pro-life laws and policies.

The UN advisory committee for the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter, “CEDAW”) provides an example. In a report on Croatia, CEDAW published the following: “The refusal, by some hospitals [in Croatia], to provide abortions on the basis of conscientious objection of doctors [constitutes] an infringement of women’s reproductive rights.”¹⁸ In other words, women have a right to abortions and doctors must provide them. The notion that women’s reproductive rights trump doctors’ rights of conscience is a “bold” statement indeed, considering the fact that the foundational human rights documents—the UDHR and the ICCPR—explicitly provide for the right to life of all human beings,¹⁹ and provide for the protection of rights of conscience.²⁰

C. Conference Statements

At every UN meeting conference statements are negotiated. Following the meeting, these statements, also known as “outcome documents,” are issued as a “report” of the meeting results. This is a third vehicle used by abortion advocates to buttress the claim a right to abortion exists.

At such a meeting, all the nations are represented (theoretically, at least, that is, every member nation of the UN has the right to be there). Therefore, agreement to the outcome document may be said to create (or, to illustrate) consensus on a point of international law. In other words, abortion advocates claim that agreement to language in an outcome document from a single international meeting creates a consensus that, under the bold position, counts as evidence of customary international law.²¹

The International Conference on Population and Development (ICPD), convened by the United Nations in Cairo, Egypt, in 1994, provided abortion advocates just such an opportunity.²² At this conference abortion advocates hoped to win express recognition of a right to abortion.²³ However, they failed.

While the statement recognized that abortion does take place in some countries, it did not endorse a “right” to abortion generally. We can see this from a close examination of the document.

In paragraph 13, it said basic “reproductive health” includes, *inter alia*, “abortion” but only “as specified in paragraph 8.25.”²⁴ Paragraph 8.25 in turn says (1) abortion should never be promoted as a method of family planning, (2) the legality of abortion is a matter of national (local) law, and (3) if abortion is legal in a nation, it should be safe:

In no case should abortion be promoted as a method family planning. . . . Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe.²⁵

The Cairo elaborates upon the meaning of “reproductive health”:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life

and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable **methods of family planning** of their choice, as well as other methods of their choice for regulation of fertility **which are not against the law**, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. *In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being through preventing and solving reproductive health problems.* It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.²⁶ (emphasis added)

In sum, while there is a “right of men and women” to reproductive health care and services, that extends only to methods that are “not against the law.”

Thus, as we can see from paragraphs 13.14, 8.25, and 7.2, while “reproductive health” includes “family planning,” it does not include abortion unless a country has legalized it (and even then, it is never to be “promoted”). In short, the Cairo statement does not recognize a general “human right” to abortion, either alone or as part of a right to “reproductive health” or to “family planning” services.

Furthermore, a number of countries made “reservations” to the document.²⁷ In these reservations, they expressly refuted any suggestion that a right to abortion was implied in the Cairo language. The reservations served instead to re-confirm the pro-life principles first stated in the UDHR and the ICCPR.²⁸ An example of the express reservations made by the United States and eight Latin American countries, refuting any implied right to abortion in the Cairo language, follows. Nicaragua’s reservation stated:

The Government of Nicaragua, pursuant to its Constitution and its laws, and as a signatory of the American Convention on Human Rights, confirms that every person has a right to life, this being a fundamental and inalienable right, and that this right begins from the very moment of conception. We accept the concepts of ‘family planning,’ ‘sexual health,’ ‘reproductive health,’ ‘reproductive rights,’ and ‘sexual rights’ ex-

pressing an explicit reservation on these terms and any others when they include ‘abortion’ or ‘termination of pregnancy’ as a component. Abortion and termination of pregnancy *can under no circumstances* be regarded as a method of regulating fertility or a means of population control.²⁹

The reaction by these nations only emphasizes the point that there was no unanimity or even consensus, at the time of the Cairo conference in 1994, that language such as “reproductive health services” was synonymous with abortion. And it must be remembered that, without unanimity, under the modern view as well as the traditional view, there is no customary international law. These national reservations when combined with the actual words in the outcome document demonstrate conclusively that Cairo does not recognize an international right to abortion—either expressly or implicitly.

SOFT NORMS

Not to be dissuaded, abortion advocates argued that the repetition of language such as “reproductive health” from the Cairo statement and other sources, over a period of time, could establish an international customary law right to abortion.

For example, a memo from one group, “Summary of Strategic Planning,” dated 2003, and placed into the Congressional Record by Congressman Chris Smith (R-N.J.)³⁰ stated

The ILP’s overarching goal is to ensure that governments worldwide guarantee reproductive rights out of an understanding that they are legally bound to do so.”

We see two principal requisites for achieving this goal:

(1) Strengthening international reproductive rights norms.

Norms refer to legal standards. The strongest existing international legal norms relevant to reproductive rights are found in multilateral human rights treaties. Based on *our* view of what reproductive rights should mean for humankind, the existing human rights treaties are not perfect. For example, at least four substantive areas of reproductive rights illustrate the limits of international reproductive rights norms in protecting women:

- a. abortion;
- b. adolescents access to reproductive health care;
- c. HIV/AIDS; and
- d. child marriage.

One strategic goal could be to work for the adoption of a new multilateral treaty (or addendum to an existing treaty) protecting reproductive rights. **The other principal option is to develop ‘soft norms’ or jurisprudence** (decisions or interpretations) **to guide states’ compliance** with binding norms.

Supplementing these binding treaty-based standards and often contributing to the development of future hard norms are a variety of ‘soft norms.’ These norms result from interpretations of human rights treaty committees, rulings of international tribunals, resolutions of inter-governmental political bodies, agreed conclusions in international conferences and reports of special rapporteurs.³¹

Thus, since existing treaties did not provide a right to abortion, the strategy was to develop such a right to abortion through soft norms into “hard” customary international law. Since, as we have seen, there was no right in 1948 (UDHR), or 1966 (ICCPR), or 1994 (Cairo), it would have been necessary to prove that it had developed since Cairo. In fact, following the election of pro-life president, George W. Bush, one “abortion-rights” group tried to win judicial approval of this theory in the 2001 case *CLRP v. Bush*.³² Though the case was dismissed for technical reasons, their complaint defines their notion of customary international law:

Customary international law is embodied, *inter alia*, in treaties (even if not ratified by the United States), the writings of international law jurists, and documents produced by United Nations international conferences. The *Restatement Third of the Foreign Relations Law of the United States* (American Law Institute 1987) defines customary international law as resulting “from a general and consistent practice of states followed by them from a sense of legal obligation.”³³

In other words, from the point of view of abortion advocates, soft norms could “ripen” into binding obligations, even for nations that never expressly agreed to them.

RESISTANCE TO THE “SOFT-NORM” MOVEMENT

Pro-life delegates to the UN have pushed back against this “soft norms” strategy. Remember that it is clear no right to abortion was recognized prior to Cairo. Rather, as mentioned before, abortion advocates assert that the repetition of “reproductive health” language taken from the Cairo statement in special rapporteur’s reports, comments from UN treaty-

monitoring bodies, UN conference outcome statements, and other “soft” sources has created a right to abortion. Thus, if pro-life delegates could simply establish that the repetition of this language was *not* understood by the nations to be an endorsement of a right to abortion, they would have rebutted that argument decisively. This was, in fact, achieved at the UN Special Session on Children held in June 2001.

As the final statement was being negotiation, some delegates confessed that certain language about “reproductive health” was understood by them to include a right to abortion. This was unacceptable to other nations.

[T]he U.S. delegate asked Andras Vamos-Goldman [an official Canadian delegate at the Child Summit held at UN headquarters in New York]... what was meant by the phrase “equal access to services... including sexual and reproductive health care,” to which the delegate replied, “of course—and I hate to use the word—but in ‘services’ is included abortion.” Those countries that do not consider abortion to be a female child’s ‘right’ reacted quickly, and a number of countries that had previously supported the inclusion of the language “agree[d] to its deletion.”³⁴

In other words, once a delegate admitted that he was using language intended to imply a right to abortion, that language was rejected. “Reproductive health” was not understood to include a general right to abortion. This shows—conclusively in my view—that no right to abortion can have developed since Cairo by the route of customary international law.

In further refutation, the United States of America appended the following explanatory statement:

Concerning references in the document to UN conferences and summits and their five year reviews, the United States does not understand any endorsement of these conferences to be interpreted as promoting abortion.

The United States understands the terms “basic social services, such as education, nutrition, health care, including sexual and reproductive health,” “health care,” “quality health care services,” “reproductive health care,” “family planning,” “sexual health,” “reproductive health,” “safe motherhood,” in the documents to in no way include abortion or abortion-related services or the use of abortifacients.”³⁵

REAFFIRMATION OF THE FOUNDATIONAL HUMAN RIGHTS DOCUMENTS' PROTECTIONS FOR LIFE

The idea that “reproductive health” language somehow evolved since the Cairo conference to cover abortion was further rebutted in 2004 in the Doha Declaration. The Doha Declaration is an outcome document from a UN international conference held at Doha, Qatar, in November 2004, to celebrate the second International Year of the Family. A quote from the report on the conference states that one of the purposes of the conference was to “reaffirm international norms” related to family life.³⁶

The following excerpt recites the principles of protection of all human life originating in the original human life documents:

The Doha Declaration (2004) Reaffirmation of Commitments to the Family

We reaffirm international commitments to strengthen the family, in particular:

We recognize the inherent dignity of the human person and note that the child, by reason of his physical and mental immaturity, needs special safeguards and care **before as well as after birth**. Motherhood and childhood are entitled to special care and assistance. **Everyone has the right to life, liberty and security of person.**³⁷

By using the exact same language of the UDHR from 1948 and the ICCPR from 1966, the Doha Declaration reconfirms the international community's commitment as it was understood when those documents were first agreed to. Simply said, the declaration undergirds the notion that the original protections for life contained within the foundational human rights documents have stood the test of time and no consensus has evolved that there is a right to abortion.

In adopting the Doha Declaration, the seventy nations who gathered at Qatar reaffirmed the meaning of the language in the original human rights documents as it was when first adopted. And, as we have discussed, that language did not include abortion.

ABORTION ADVOCATES LIMITED SUCCESS SINCE DOHA

Despite the conclusive evidence just reviewed from Doha and the UN Special Session on Children that there is no international consensus that a “right to abortion” has evolved in customary international law, the argument continues to made to judges that an international human right to abortion exists.

A. Colombia

Colombia's Constitution explicitly protects life.³⁸ Yet, despite that fact, in a 2006 decision, the Columbian Corte Constitucional (Constitutional Court) ruled that under certain circumstances abortion could not be illegal.³⁹ This was a radical decision because the Constitutional Court relied partially upon soft norms in its opinion, which declared unconstitutional portions of Colombia's Criminal Code that criminalized abortion.⁴⁰ The Court's ruling was based on its finding “that international human rights law could be applied in Colombia through the Court's incorporation of regional and international human rights law within its judicial review of the abortion legislation.”⁴¹ This decision represented the “first constitutional decision that provided an international human-rights framework to review the constitutionality of abortion under domestic law.”⁴²

B. Europe

In Europe, the pro-abortion argument has been subtly different. There the effort has been to convince a court to hold that a fundamental legal document (a treaty) implies a right to abortion that trumps national laws (similar to *Roe*, where the Supreme Court interpreted our fundamental law—the Constitution—to imply a right to abortion, trumping state laws to the contrary). While abortion advocates have been frustrated on this point, courts have interpreted the requirements of the fundamental law in a way that advances abortion and undermines pro-life cultural preferences.

The European Court of Human Rights (hereafter, the “ECHR”) is the human rights court of the Council of Europe. The ECHR interprets the European Convention on Human Rights (hereafter, “the Convention”), a treaty ratified in 1950.⁴³ The Council of Europe consists of forty-seven member countries, whose policies are affected by ECHR decisions. An opinion by the ECHR that recognized abortion as a right—even though officially affecting policy only for those countries—would

be cited by abortion advocates as evidence that an international right to abortion exists.⁴⁴ As explained below, recent cases from the ECHR illustrate further success of abortion advocates in turning soft norms into hard law.

1. *Tysic v. Poland*⁴⁵

In 2007 the ECHR decided *Tysic v. Poland*, a case in which a woman was denied a health exception for an abortion.⁴⁶ In its ruling, the ECHR found that Poland violated Article 8 of the Convention, which guarantees a right to privacy,⁴⁷ by not effectively allowing an abortion for the health exception to the plaintiff.⁴⁸ But the main import of this case is the ECHR's finding that Poland, which is a pro-life country that only allows for abortions in certain limited circumstances, did not institute procedures that would allow abortions under the exceptions provided for in law. “Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.”⁴⁹

2. *A, B, and C v. Ireland*⁵⁰

Ireland's Constitution guarantees the right to life: “The State **acknowledges the right to life of the unborn** and, with due regard to the equal right to life of the mother, **guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.**”⁵¹ Yet, abortion advocates insisted that European, non-Irish “consensus” can trump Ireland's express constitutional protections for life. In *ABC* the ECHR applied the principle from *Tysic* to Article 40.3.3, thus weakening Ireland's constitutional protections for life.

The ECHR decided *A, B, and C v. Ireland* in December 2010. The plaintiffs were three anonymous women—referred to as “A,” “B,” and “C”—each of whom claimed that Ireland's prohibition on abortion required her to travel abroad to obtain one, which violated her Convention rights.⁵² The plaintiffs asked the ECHR to find a right to abortion in the Convention, even though the language of the Convention does not mention abortion—in fact, Article 2 of the Convention explicitly guarantees a right to life: “Everyone's right to life shall be protected by law.”⁵³ Nevertheless, the plaintiffs argued that the ECHR should interpret the treaty as providing such a right.⁵⁴ They found this “right” by reading two Articles of the Convention together to imply it: Article 3, which prohibits torture and inhuman and degrading treatment,⁵⁵ and Article 8, which guarantees a right to privacy protected from interference, with certain exceptions including where national security and public safety are implicated.⁵⁶

The *ABC* plaintiffs further argued that because the

laws of a majority of European countries favor abortion, this “consensus” should be binding on Ireland as well.

A strong international consensus can demonstrate that a less burdensome alternative is available and preferred throughout the member States.... The State fails to address the fact that **Ireland's abortion laws are completely incongruous with the European consensus and international standards on lawful abortion** to protect women's health and well-being.⁵⁷

The ECHR did not accept this argument. While it said that a consensus exists in Europe that abortion be allowed on the grounds of “health and well-being,” that consensus did not “decisively narrow the broad margin of appreciation [accorded to] the State”—meaning that Ireland does not have to bow to any such consensus, but under the “margin of appreciation” can maintain more stringent abortion restrictions in law.⁵⁸

The final outcome of the *ABC* case presents a “good news, bad news” scenario. As stated above, the ECHR disagreed with the plaintiffs and found no right to abortion in the Convention. And by reiterating its finding from *Vo v. France*⁵⁹ regarding the “margin of appreciation,” the ECHR maintained respect for Ireland's sovereignty. Under the margin of appreciation, decisions on issues such as abortion are left up to the States.⁶⁰

The bad news, however, is that the ECHR also advanced the idea from *Tysic* that if a country has under any interpretation provided a right to abortion in its law (as Ireland had done in the *X* case⁶¹), it must effectively provide for that right.

[249] While a broad margin of appreciation is accorded to the State as to the decision about the circumstances in which an abortion will be permitted in a State... **once that decision is taken the legal framework devised for this purpose should be “shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention.”**⁶²

The ECHR in *ABC* thus interpreted Article 40.3.3 of Ireland's Constitution to allow abortion when the “life” of the mother is at stake, as opposed to her health or well-being.⁶³

Plaintiff C had asserted her pregnancy constituted a potential risk to her life.⁶⁴ She (echoing *Tysic*) also claimed that “she required a regulatory framework by which any risk to her life and her entitlement to a lawful abortion in Ireland could be established.”⁶⁵ Since Ireland had not passed any legislation to implement such a

“regulatory framework”, the ECHR found that Ireland violated Article 866 of the Convention.⁶⁷ The *Tysiāc* principle required Ireland to put in place measures to inform women of a right to abortion under Irish law—this holding reinvigorated abortion as a political subject in Ireland and caused an uproar in the country as to how to comply.⁶⁸

3. *R.R. v. Poland*⁶⁹

The *Tysiāc* principle was further applied by the Court to undermine pro-life views in the case *R.R. v. Poland*, decided by the ECHR in 2011.⁷⁰ In *R.R.* the plaintiff alleged that the conscientious objections of medical staff denied her the right to choose an abortion that might have been allowed under Poland’s “health” exception if results of genetic tests had been obtained in a timely manner.⁷¹

Following a prenatal ultrasound, the plaintiff had been informed that the fetus might have some genetic abnormality, possibly Turner syndrome.⁷²

Turner syndrome... is a genetic condition in which a female does not have the usual pair of two X chromosomes. Girls who have this condition usually are shorter than average and infertile due to early loss of ovarian function. Other health problems that may occur with TS include kidney and heart abnormalities, high blood pressure, obesity, diabetes mellitus, cataract, thyroid problems, and arthritis. Girls with TS usually have normal intelligence, but some may experience learning difficulties.⁷³

The plaintiff ultimately gave birth to a baby girl affected with Turner syndrome. In her civil suit, the plaintiff claimed that she was unable to obtain genetic testing in time to qualify for the health exception for abortion, due to “unreasonable procrastination” by the doctors dealing with her case and that they “failed to provide her with reliable and timely information about the fetus’ condition [and]... failed to establish the fetus’ condition in time for her to make an informed decision as to whether or not to terminate the pregnancy.”⁷⁴

The Supreme Court of Poland ruled against the medical professional defendants and found that the plaintiff’s rights had been violated under the same two Convention articles involved in *A, B, and C v. Ireland*: Article 3, Inhuman or Degrading Treatment⁷⁵ and Article 8, Right to Respect for Private and Family Life.⁷⁶ In reviewing this decision, the ECHR stated that whether the abnormality would have entitled the plaintiff to an abortion was not at issue; rather, what was at issue was the legal obligation to provide prenatal genetic testing “with-

in the time-limit for abortion to remain a lawful option for her.”⁷⁷ Referring to its aforementioned finding in *Tysiāc*—if a right to abortion has been provided for in law, the State must make it available *in fact*. The State has a “positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion.”⁷⁸ In other words, Poland had not effectively instituted procedures to allow the plaintiff access to genetic testing in time to get an abortion, thus affirming that her Convention rights were violated under Articles 3 and 8.⁷⁹ When one reflects that the woman met resistance from a decidedly pro-life medical culture, one sees that *in practice* this decision undermines the conscience rights of that pro-life medical culture.

4. Conscientious Objection—Another Obstacle to Establishing an International Right to Abortion

The *R.R.* decision allows a woman’s right to an abortion to trump the rights of health professionals to refuse certain services on grounds of conscience:

[S]tates are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.⁸⁰

The plaintiff in *R.R.* had argued that the violations of Articles 3 and 8 of the Convention (as found by the ECHR) resulted in part from “the unregulated and chaotic practice of conscientious objection under Polish law.”⁸¹ Echoing this argument, a Special Rapporteur submitted comments to the court, stating:

The consensus among UN Treaty Monitoring Bodies and international health organizations was that the **right of a health care provider to conscientiously object** to the provision of certain health care services **must be carefully regulated** so that it did not effectively deny a woman the right to obtain such services which were guaranteed by the law, in this case pursuant to Article 8 of the European Convention.⁸²

Article 9 of the Convention guarantees freedom of conscience, as well as of thought and of religion, subject only to limitations necessary to protect “public order, health or morals or... the rights and freedoms of others.”⁸³ The Convention is the treaty—the binding law—which provides for rights of conscience; however, these rights are under attack.⁸⁴

The call for limitation of conscience rights was

again put forward by Special Rapporteur, Christine McCafferty, in a report to the Parliamentary Assembly of the Council of Europe (PACE) on Conscientious Objection.⁸⁵ The report acknowledged the right of conscientious objection, but recommended that member states adopt rigorous limitations on that right, including obliging individuals and institutions to provide abortions in cases of emergency.⁸⁶ “Emergency” in the draft resolution is defined to include danger to the patient’s life *or health*.⁸⁷ A healthcare provider would also be obligated under the draft resolution to provide “the desired treatment” when there is no equivalent practitioner within a reasonable distance to which the patient can be referred.⁸⁸ If PACE had adopted the McCafferty Report’s recommendations, anti-life forces would be able to badger governments to restrict conscience rights based on the argument that such a vote represented a “European consensus.”

Fortunately, PACE rejected much of the McCafferty Report’s recommendations and instead adopted a resolution recognizing the right to conscientious objection by both individuals and institutions, which stated that conscientious objection is “adequately regulated” in the “vast majority of council of Europe member states.”⁸⁹

WHY THIS MATTERS IN THE UNITED STATES

Supreme Court opinions in cases such as *Lawrence v. Texas*⁹⁰ and *Roper v. Simmons*⁹¹ indicate the Court’s willingness to rely upon European viewpoints and trends in European court decisions to decide the constitutionality of disputed moral issues such as abortion.

In reviewing the constitutionality of a Texas statute that criminalized same-sex sodomy, the *Lawrence* Court found the liberty interest of the Due Process Clause of the 14th Amendment provided homosexuals a right to engage in sexual conduct in the privacy of the home.⁹² The Court found the statute unconstitutional, and overruled its prior decision in *Bowers v. Hardwick*.⁹³ For our purposes, what is noteworthy about the decision is that, writing for the Court, Justice Antony Kennedy relied on the fact that the ECHR had rejected the reasoning and holding of *Bowers* and that “other nations have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct.”⁹⁴

In *Roper v. Simmons*, Justice Kennedy again relied extensively on the viewpoints and laws of numerous countries to justify the conclusion that the 8th and 14th

amendments forbid imposition of the death penalty on offenders who committed their crimes before turning 18.⁹⁵ In his opinion, Justice Kennedy opined that “[i]t is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty”⁹⁶ and “[t]he opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.”⁹⁷

Viewing international customs (or judicial decisions of European courts interpreting documents other than the U.S. Constitution) as *informing* U.S. Supreme Court decisions is a short step from viewing such customs as *binding* on those decisions under customary international law. Should the Court ever overturn *Roe*, the establishment of an international right to abortion under customary law would provide abortion advocates the fail safe back-stop they seek to protect a right to an abortion in the U.S.

THE SAN JOSE ARTICLES

In March 2011, a group of pro-life government, academic, legal, and civil society representatives met in Costa Rica. The result of that meeting was the San Jose Articles. The San Jose Articles provide support for pro-life nations against growing pressure to abandon pro-life policies in order to be “in compliance” with international legal “obligations.”⁹⁸ The purpose of the San Jose Articles is to provide “expert testimony” that there is *no international human right to abortion on demand*, because there is *no unanimity in the international community* on this issue.⁹⁹ This expert testimony is the result of the efforts of a group of experts: law professors, philosophers, parliamentarians, ambassadors, human rights lawyers, and UN General Assembly delegates—who prepared these articles to demonstrate how human rights instruments protect the unborn child—contrary to the voices urging the opposite conclusion.¹⁰⁰

The San Jose Articles reaffirm a number of important concepts. One is that life begins at conception and that conception creates a “human being,” entitled from that point on to protection of his or her inalienable human rights. Second, these rights are explicitly protected in the UDHR and the ICCPR—the fundamental human rights documents—and, third, no abortion right has been established in customary international law in the intervening years; nor, fourth, has any UN Treaty established such a right. Fifth, any UN treaty monitoring body that purports to find such a right is, thus, acting contrary to its mandate and outside its authority. Thus,

governments should not bow to pressure to change their laws based, but should continue to adhere to the protection for life as affirmed in the fundamental human rights documents.

The San Jose Articles

Article 1. As a matter of scientific fact a new human life begins at conception.

Article 2. Each human life is a continuum that begins at conception and advances in stages until death. Science gives different names to these stages, including zygote, blastocyst, embryo, fetus, infant, child, adolescent and adult. This does not change the scientific consensus that at all points of development each individual is a living member of the human species.

Article 3. From conception each unborn child is by nature a human being.

Article 4. All human beings, as members of the human family, are entitled to recognition of their inherent dignity and to protection of their inalienable human rights. This is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments.

Article 5. There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.

Article 6. The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) and other treaty monitoring bodies have directed governments to change their laws on abortion. These bodies have explicitly or implicitly interpreted the treaties to which they are subject as including a right to abortion.

Treaty monitoring bodies have no authority, either under the treaties that created them or under general international law, to interpret these treaties in ways that create new state obligations or that alter the substance of the treaties.

Accordingly, any such body that interprets a treaty to include a right to abortion acts beyond its authority and contrary to its mandate. Such *ultra vires* acts do not create any legal obligations for states parties to the treaty, nor should states accept them as contributing to the formation of new customary international law.

Article 7. Assertions by international agencies or

non-governmental actors that abortion is a human right are false and should be rejected.

There is no international legal obligation to provide access to abortion based on any ground, including but not limited to health, privacy or sexual autonomy, or non-discrimination.

Article 8. Under basic principles of treaty interpretation in international law, consistent with the obligations of good faith and *pacta sunt servanda*, and in the exercise of their responsibility to defend the lives of their people, states may and should invoke treaty provisions guaranteeing the right to life as encompassing a state responsibility to protect the unborn child from abortion.

Article 9. Governments and members of society should ensure that national laws and policies protect the human right to life from conception. They should also reject and condemn pressure to adopt laws that legalize or depenalize abortion.

Treaty monitoring bodies, United Nations agencies and officers, regional and national courts, and others should desist from implicit or explicit assertions of a right to abortion based upon international law.

When such false assertions are made, or pressures exerted, member states should demand accountability from the United Nations system.

Providers of development aid should not promote or fund abortions. They should not make aid conditional on a recipient's acceptance of abortion.

International maternal and child health care funding and programs should ensure a healthy outcome of pregnancy for both mother and child and should help mothers welcome new life in all circumstances.¹⁰¹

CONCLUSION

Not surprisingly, release of the San Jose Articles has unleashed criticism from abortion advocates. In an AlterNet internet article, one author goes so far as to admit that current human rights agreements do not contain a right to abortion. "The [San Jose] articles point out that there is technically no 'right to abortion' in any current global human rights agreement. And they're right. But this is beside the point."¹⁰² Presumably she is referring to the absence of a right under a treaty, for she goes on to claim that "States' failures to ensure access to...abortion violates human rights established in international law...including the right to...reproductive health."¹⁰³

The author justifies her position by referring to "precedence" established over decades by "reproductive rights advocates" for the "right to health" which "establishes precedence for access to safe and legal abortion."¹⁰⁴ However, as we saw in our analysis of the Cairo statement, abortion is not part of a right to reproductive health.

Perhaps the author is, in effect, claiming a right to abortion under due to the development of customary international law. However, scattered "precedent" does not international law make. As discussed extensively in this paper, there are requirements that must be met to establish customary international law, and these have not been met.

The San Jose Articles provide a solid counter to the notion that a right to abortion has been established in customary international law. Efforts by abortion advocates to insinuate abortion into international law must be exposed and opposed. The rights of sovereign nations must be upheld to determine their own law on this other issue. Courts should respect "traditional" international law and not succumb to efforts to supplant the traditional understanding of international law with the "bold" position, nor use soft norms to cement abortion rights into law. ✕

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ENDNOTES

- 1 *Roe v. Wade*, 410 U.S. 113 (1973).
- 2 See <http://marchforlife.org>.
- 3 Neither under a "liberty" or "privacy" interpretation, U.S. Const. amend. XIV, § 1.
- 4 *Universal Declaration of Human Rights* (December 10, 1948), G.A. Res. 217A(III), UN Doc. A/810, (1948) (hereafter, UDHR), available at <http://www.un.org/en/documents/udhr>.
- 5 Mary Ann Glendon, *A World Made New* (New York, Random House, 2001), xv-xvi.
- 6 UDHR, prmb, par. 2.
- 7 *Ibid.*, par. 3.
- 8 *Ibid.*, par. 1.
- 9 UDHR, art. 3.
- 10 *International Covenant on Civil and Political Rights* (December 16, 1966), 999 U.N.T.S. 171 (hereafter, ICCPR), available at <http://www.2.ohchr.org/English/law/ccpr.htm>.
- 11 Compare U.N. Charter art. 10, with RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102, reporters' note 2 (1987).
- 12 See Vienna Convention on the Law of Treaties (May 23, 1969), art. 26, 1155 U.N.T.S. 331.
- 13 ICCPR, art. 6 (1).
- 14 William Saunders, "Understanding International Law: The ABC'S of an International Right to Abortion," *Human Life Review* 84 (2010).
- 15 *Ibid.*, citing *The Paquete Habana*, 175 U.S. 677, 700 1900.
- 16 Curtis A. Bradley and Jack L. Goldsmith, "Customary International Law as Federal Common Law: A Critique of the Modern Position," *Harvard Law Review* 110 (1997): 815-76.
- 17 Report of the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, UN Doc. No. A/HR/C/7/11 ¶ 52 (2008) available at http://www.who.int/medicines/areas/human_rights/A_HRC_7_11.pdf.
- 18 Report of the United Nations Committee on the Elimination of Discrimination Against Women, G.A. Res. 54/38, ¶ 109, 21st Sess., U.N. Doc. A/54/38/Rev.1, Jan. 1, 1999.
- 19 UDHR, art. 3; see ICCPR, art. 6-1.
- 20 UDHR, art. 18; see ICCPR, art. 18.
- 21 Bradley and Goldsmith, n. 17 above.
- 22 George Weigel, "What Really Happened at Cairo," *First Things* (February 1995), available at <http://www.firstthings.com/article/1995/02/002-what-really-happened-at-cairo>.
- 23 *Ibid.*, ¶ 8.25.
- 24 Programme of Action of the International Conference on Population and Development, U.N. Doc. A/CONF.171/13, ¶ 13.14 (1994); see chap. 8, ¶ 8.25, <http://www.un-documents.net/ac171-13.htm>.
- 25 *Ibid.*, ¶ 8.25.
- 26 *Ibid.*, ¶ 7.2.
- 27 These reservations are documented in part 2, chapter 1 of Programme of Action of the International Conference on Population and Development.
- 28 ICCPR; see UDHR.
- 29 *Ibid.* See A/CONF.171/13 Report of the ICPD, available at <http://www.unfpa.org/public/cache/office/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Programme;jsessionid=A2AAFAFE60A2673AA2B45997998ABECD.jahia02>.
- 30 149 Cong. Rec. E2534, E2535 (2003) (emphasis added).
- 31 Sources of soft norms include the European Court of Human Rights, the CEDAW Committee, provisions from the Platform for Action of the Beijing Fourth World Conference on Women, and reports from the Special Rapporteur on the Right to Health. These "soft" norms are discussed above in the section, "sources that abortion advocates claim support a right to abortion."
- 32 *The Center for Reproductive Law and Policy v. Bush*, 304 F.3d 183 (2d Cir. 2002).
- 33 *The Ctr. for Reprod. Law & Policy v. Bush*, 2001 WL 36082935 (S.D.N.Y. (2001) First Amended Complaint at 80 (emphasis added).
- 34 William L. Saunders, "Neither By Treaty, Nor By Custom: Through the Doha Declaration, the World Rejects Claimed International Rights to Abortion and Same-Sex Marriage, Affirming Traditional Understandings of Human Rights," *Georgetown Journal of Law and Public Policy* 67, 91 (Winter, 2011) (Vámos-Goldman's statement was widely reported at the time: see LifeSiteNews.com, Life, Family and Culture News, Resources, Canada Shocks U.N. Delegates, <http://www.lifesitenews.com/news/archive/1dn/2001/jun/01061401> (June 14, 2001)).
- 35 "United States of America Explanation of Position," 5/1/2001.
- 36 Conference to Celebrate the Tenth Anniversary of the International Year of the Family, Doha, Qatar, (November 29-30, 2004), *Report on the Doha International Conference for the Family*, U.N. Doc. A/59/599 (December 7, 2004).
- 37 *Ibid.*, 15 ¶ 2.
- 38 Constitución Política de Colombia [C.P.], 1991, art. 2, par. 2. ("The authorities of the Republic are established in order to protect all individuals residing in Colombia, in their life, honor, property, beliefs, and other rights and freedoms, and in order to ensure the fulfillment of the social duties of the State and individuals.")
- 39 Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, Sentencia C-355/06 (Colom.) (Abortion not illegal when "mother's life or physical or mental health is at risk, when the preborn child has serious malformations indicating probable non-viability, or when the pregnancy is the result of rape, incest, unwanted artificial insemination, or unwanted implantation of a fertilized ovum.")
- 40 Saunders, n. 6.
- 41 Veronica Undurraga and Rebecca J. Cook, "Constitutional Incorporation of International and Comparative Human Rights Law: The Colombian Constitutional Court Decision C-355/2006," in *Constituting Equality: Gender Equality and Comparative Constitutional Law*, ed. Susan H. Williams (2009), 216, 220.
- 42 *Ibid.*, 241.
- 43 European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950), 213 U.N.T.S. 221 (entered into force September 3, 1953) [hereinafter Convention], available at <http://conventions.coe.int/treaty/en/Treaties/html/005.htm>.
- 44 See discussion above.

- 45 *Tysięc v. Poland*, App No. 4510/03, 2007-I Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79812>.
- 46 *Ibid.*, ¶ 119 (patient suffered from severe myopia from 1977).
- 47 Convention, § I, art. 8 (“Privacy 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”).
- 48 *Tysięc*, ¶ 104. (“In this context, the Court observes that the applicable Polish law, the 1993 Act, while prohibiting abortion, provides for certain exceptions.... [A]bortion is lawful where pregnancy poses a threat to the woman’s life or health, as certified by two medical certificates, irrespective of the stage reached in pregnancy.”).
- 49 *Ibid.*, ¶ 116.
- 50 *A, B and C v. Ireland*, App. No. 25579/05 Eur. Ct. H.R. (2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-102332>.
- 51 Constitution of Ireland, art. 40.3.3, in operation as from December 29, 1937, available at <http://www.irishstatutebook.ie/en/constitution/> (emphasis added).
- 52 *A, B and C*, ¶ 139.
- 53 Convention, § I, art. 2 (“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”).
- 54 *A, B and C*, ¶ 139.
- 55 Convention, § I, art. 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”).
- 56 Corte Constitucional.
- 57 *A, B and C*, ¶ 90. (Applicants’ Reply to the Observations of Ireland on the Admissibility and Merits, December 23, 2008) (emphasis added).
- 58 *Ibid.*, ¶ 236.
- 59 *Vó v. France*, App. No. 53924/00, 2004-VIII Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887>.
- 60 *Ibid.*, ¶ 82 (“It follows that the issue of when the right to life begins comes within the margin or appreciation which the Court generally considers that States should enjoy in this sphere.”).
- 61 See *Attorney General v. X* [1992] I.L.R.M. 401 (Ir.) (The Supreme Court of Ireland ruled that “threat of suicide” by a girl seeking an abortion constituted “a real and substantial threat to the life of the pregnant woman or girl.” It thereby allowed abortion in such circumstances in Ireland under sec.
- 40.3.3 of the Irish Constitution. The lower court had interpreted 40.3.3 to protect the life of the unborn child).
- 62 *A, B and C*, ¶ 249 (citing *S. H. and Others v. Austria*, App. No. 57813/00 ¶ 74 (2010)) (emphasis added).
- 63 *Ibid.*, ¶ 265. (Implementation of legislation to regulate the application of Article 40.3.3 would allow “pregnant women who establish that there is a real and substantial risk to their life to have an abortion in Ireland rather than traveling out of the jurisdiction”).
- 64 *Ibid.*
- 65 *Ibid.*, ¶ 130.
- 66 *Ibid.*, ¶ 103. (“All governments...are urged to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family-planning services...Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”)
- 67 *Ibid.*, ¶ 267-68 (“[A]uthorities failed to comply with their positive obligation to secure to [Plaintiff “C”] effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which [Plaintiff “C”] could have established whether she qualified for a lawful abortion in Ireland in accordance with Article 40.3.3 of the Constitution. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention.”)
- 68 Mary Minihan, “Expert Group on Abortion to Report by July,” *The Irish Times* (March 16, 2012), available at <http://www.irishtimes.com/newspaper/ireland/2012/0316/1224313395195.html>. Ireland’s Ambassador to the UN confirms the expert group tasked with making recommendations on implementing an ECHR ruling on abortion will report to the Government by July. Ireland’s rejection of six recommendations by UN member States on “reproductive rights” was decried by an Irish Family Planning Association member
- as “astonishing” for a state that expresses respect for human rights; while a spokesperson for the Society for Protection of Unborn Children pointed out that the UDHR and Irish Constitution both recognize and protect the right to life.
- 69 *R.R. v. Poland*, 53 Eur. Ct. H.R. 31, ¶ 166 (2011).
- 70 *Ibid.*
- 71 *Ibid.*, ¶ 43.
- 72 *Ibid.*, ¶¶ 9, 33.
- 73 *Ibid.*, ¶ 16 n.3.
- 74 *Ibid.*, ¶ 43.
- 75 *Ibid.*, ¶¶ 161-62; see *Tysięc*, ¶ 119.
- 76 *Ibid.*, ¶ 214; see Corte Constitucional.
- 77 *Ibid.*, ¶¶ 202-04.
- 78 *Ibid.*, ¶ 200.
- 79 *Ibid.*, ¶¶ 108-09. See also European Court Issues Landmark Decision Against Poland, Says Women Entitled to Prenatal Genetic Testing, CTR. FOR REPROD. RIGHTS (May 26, 2011), <http://reproductiverights.org/en/press-room/european-court-issues-landmark-decision-against-poland-says-women-entitled-to-prenatal-ge>. (Delighted at the outcome of *R.R. v. Poland*, the CRR exulted in a press release. “For the first time in its history, the European Court of Human Rights specifically found that an abortion-related violation amounted to inhuman and degrading treatment!”)
- 80 *R.R. v. Poland*, ¶ 206.
- 81 *Ibid.*, ¶ 94.
- 82 *Ibid.*, ¶ 128. (Third party submission of “Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the office of the United Nations High Commissioner for Human Rights.”)
- 83 Convention: § I, art. 9: “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”
- 84 *R.R. v. Poland*, ¶¶ 94, 128 (2011).
- 85 Eur. Consult. Ass., Report: Social, Health and Family Affairs Committee, Women’s access to lawful medical care: the problem of unregulated use of conscientious objection, Rapporteur: Ms Christine McCafferty, United Kingdom, Socialist Group, Doc. No. 12347 (July 20, 2010), <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12506&Language=EN>.
- 86 *Ibid.*, §§ A. 4.1.3, C. 29, 40, 56.
- 87 *Ibid.*, § A. 4.1.3.
- 88 *Ibid.*
- 89 Eur. Consult. Ass., Resolution, The right to conscientious objection in lawful medical care, Doc. No. 1763, par. 3 (2010), available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1763.htm>.
- 90 *Laurence v. Texas*, 539 U.S. 558 (2003).
- 91 *Roper v. Simmons*, 543 U.S. 551 (2005).
- 92 *Laurence*, 539 U.S. at 558.
- 93 *Bowers v. Hardwick*, 478 U.S. 186 (1986).
- 94 *Laurence*, 539 U.S. at 560.
- 95 *Roper*, 543 U.S. at 551.
- 96 *Ibid.*, 578.
- 97 *Ibid.*
- 98 United Nations, *Press Conference on Launch of ‘San Jose Articles’* (October 6, 2011), available at http://www.un.org/press/en/2011/111006_Holy_See.doc.htm.
- 99 *Why the San Jose Articles? Abortion and the Unborn Child in International Law*, San Jose Articles, available at http://www.sanjosearticles.com/?page_id=47.
- 100 *Ibid.*
- 101 *Ibid.*
- 102 Jessica Mack, “What Are the ‘San Jose Articles?’ Don’t Be Fooled by the Conservative Global Elites’ Latest Ploy to Attack Science, Women, and the United Nations” (October 25, 2011), available at <http://www.alternet.org/reproductivejustice/152868>.
- 103 *Ibid.*
- 104 *Ibid.*

John Henry Newman’s Epistemology of Christian Belief

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Newman was born in troubled times which knew not only political and military upheaval but also turbulence of soul. Old certitudes were shaken, and believers were faced with the threat of rationalism on the one hand and fideism on the other. Rationalism brought with it a rejection of both authority and transcendence, while fideism turned from the challenges of history and the tasks of this world to a distorted dependence upon authority and the supernatural. In such a world, Newman came eventually to a remarkable synthesis of faith and reason.¹

INTRODUCTION

This article examines the thought of English philosopher and theologian John Henry Newman (1801-1890) on faith and rationality.² In particular, I consider several of Newman’s famous *Oxford Sermons* and much of his philosophical essay *Grammar of Assent* that is taken up with arguments against evidentialism and its belief policy. A belief policy contains “principles [that] provide standards for the management of [one’s] belief system. They tell you what beliefs you ought and ought not to hold. They also make clear what kinds of reason or evidence entitles you to hold a particular belief.”³ The belief policy of evidentialism demands that the knower has cognitive access to what justify his beliefs in order to be rational in holding them. Nineteenth-century objections to the rationality of Christian faith emphasized the immorality of believing a proposition without having sufficient evidence that justified one’s Christian beliefs.⁴ On this view, a necessary condition for justification is some sort of epistemic access to this evidence, awareness that my belief is based on this evidence, as well as awareness that the evidence for the belief is good evidence. Newman rejects this position essentially because it relegates the mass of

Christian believers to an irrational faith. It also implies that “Christianity cannot stand the full light of reason, or, as it has sometimes been expressed, that ignorance is the mother of devotion.”⁵ Newman expresses surprise, indeed befuddlement, at the primacy that is ascribed to arguments, to the evidence of reason, in making claims about being justified in believing that something is true. This puts the burden of proof on the individual to provide an argumentative justification for his beliefs prior to being justified in believing something. In contrast, Newman holds that one can be justified in holding a certain belief without being able to give a justification.⁶ He explains: “The reason why I think it «the subject» of great importance just now is this: because just now a skepticism is on foot, which throws on the individual the *onus probandi*, in a way never contemplated, or at least recognized before.” He continues: “Hitherto a man was allowed to believe till it was logically brought home to him that he ought not to believe: but now it seems tacitly to be considered that a man has no liberty to believe, till it has been brought home to him in a rational form that [till he can ‘show cause’ distinctly, or at least till others can do it for him, why] he has [an epistemic] right to do so.”⁷ Of course Newman wants to face head-on the question as to how the faith of the great mass of Christians who know nothing of arguments can be rational in believing.

If children, if the poor, if the busy, can have true Faith, yet cannot weigh evidence, evidence is not the simple foundation on which Faith is built. If the great bulk of serious men believe, not because they have examined evidence, but because they are disposed in a certain way—because they are “ordained to eternal life,” this must be God’s order of things. Let us attempt to understand it. *Let us not disguise it, or explain it away. It may have difficulties; if so, let us own them. Let us fairly meet them: if we can, let us overcome them.*⁸

The bulk of this paper is taken up with examining Newman’s own critique of evidentialism, especially, though not exclusively, in the *Oxford Sermons*, so as to meet the difficulties associated with the question regarding the

rationality of the ordinary Christian believer.

This article is organized as follows. In section 1, Newman's critical response to evidentialism is presented. Both his theological and philosophical objections are examined as well as his account of the rationality of Christian belief. This is followed, in section 2, by an analysis of Newman's notion of rationality, which he variously calls "implicit reason," "informal inference," and "illative sense," on the one hand, distinguishing it from argumentative reason, or "explicit reason," on the other. In section 3, we set forth Newman's parity argument that religious belief is in a similar epistemic state as any other form of belief. He argues for parity between religious belief on the one hand, and beliefs formed by the senses, memory, and reasoning on the other. In section 4, we make some comments on the problem of relativism and the need for realist metaphysics.

1. EVIDENTIALISM AND A VARIETY OF RESPONSES

Evidentialism is the view that religious belief is rationally acceptable only if there is good evidence, argument, or proof for it. The idea of rationality is thus firmly tied to that of evidence, where good evidence would be theistic arguments to secure justification for religious belief. Formidable Enlightenment critics of Christian belief like David Hume, Immanuel Kant, Bertrand Russell, J. L. Mackie, and Anthony Flew charged that theistic proofs or arguments are unsuccessful, and hence belief in God is irrational, contrary to reason, or not rationally justifiable. Since the Enlightenment, Christians have responded to this charge in one of three ways.⁹ One, there is the response of theistic evidentialism. This position agrees with the evidentialist idea of rationality but claims that theistic proofs or arguments are available such that there is sufficient evidence for belief in God to be rational, and thus, on this view, theism is rationally justifiable. Prominent proponents of theistic evidentialism are, among many others, Richard Swinburne, Basil Mitchell, C. S. Lewis, and William Paley.

Two, there is the response of fideism, which also agrees with the evidentialist idea of rationality but significantly opposes faith to that idea of reason. This position claims that we believe in God as a matter of faith rather than the evidence of reason, or perhaps even contrary to reason because faith involves

paradoxical beliefs. Hill and Rauser correctly note, "Identifying fideists are difficult, particularly since it is doubtful that many of the theologians often associated with the position in fact held it. For instance, while Kierkegaard and Tertullian are often cited as fideists, it is more likely that each was rejecting a particular construal of reason rather than reason *per se*."¹⁰ More to the point, identifying fideists is particularly difficult when we consider that a distinction is drawn by no less than Thomas Aquinas between some things in the Christian faith being *above* although not *against* reason. "Now, although the truth of the Christian faith which we have discussed surpasses the capacity of the reason, nevertheless that truth that the human reason is naturally endowed to know cannot be opposed to the truth of the Christian faith."¹¹

Newman himself, in his *Philosophical Notebook*, remarks upon Aquinas's claim. "What is meant by above «beyond» and *against*?... *Why* is it that things in the Christian faith are *above*, tho' not *against* reason?"¹² It is not an overstatement to say that Newman's epistemology is an attempt to address this question pertaining to the rationality of Christian faith by developing an alternative construal of reason to that of evidentialism. This claim brings us to the third response.

Three, there is the response of the reformist views of contemporary philosophers like Alvin Plantinga, Nicholas Wolterstorff, William Alston, Michael Polanyi, and others, who reject the evidentialist idea of rationality as well as the accusation of fideism, while defending the reasonableness of Christian belief with a broader, more sensible and, accordingly, alternative construal of rationality.¹³ The concept of rationality is, on this view, broader because rationality is not limited to evidential reasoning, argument or proof; and more sensible because it is able to judge rational most of the beliefs that apparently form the bedrock of our lives.

In what follows, I show that Newman belongs to this third response to the evidentialist objection to the rationality of Christian belief. As Stanley Jaki insightfully writes, "Working with simple souls, Newman, great logician as he was, could not help noticing the difference between their vast ignorance of the proofs of the Christian Faith and their firm, unshaken attachment or assent to it. They were never absent from his mind as he struggled in writing the *Grammar [of Assent]*, which in fact is aimed at defending the mass of the faithful against the accusation of fideism."¹⁴ The accusation of fideism here means something like holding that the faith of the mass of believers is such that

it is rationally substandard, indeed irrational, because it is not knowingly and explicitly grounded in theistic proofs. In response to objections like these, Aquinas held that theistic arguments were *available* but *not necessary* for being rational in holding Christian beliefs. He said, "There is nothing to stop a man accepting on faith some truth which he personally cannot demonstrate, even if that truth in itself is such that demonstration could make it evident."¹⁵ Clearly, Newman, like Aquinas, sensed that there was something amiss when the mass of faithful were held to be epistemically irresponsible because they didn't ground their beliefs in arguments.

In a January 5, 1860 unpublished paper on the "Evidence for Revelation," Newman writes,

The great mass of Catholics knows nothing of argument; how then is their faith rational?... The question then «to be considered» takes the shape of an objection, and that objection is of the following form: Faith, which is not based upon rational grounds, is a superstition, or a prejudice, or a fanaticism, or some other kind of unreality. What are the grounds on which the great mass of religious persons believes? Few of them have any sort of opportunity or means of forming any good reason whatever; take away from the uneducated classes, young people, men in the business of life, women, and you nearly exhaust the community. Few indeed are there who have any leisure at all for reflection, or the resources of mind, if they have leisure, to turn it to account.¹⁶

Newman's framing of this objection is similar to Aquinas' position.

According to Aquinas, then, even those truths that are in themselves naturally knowable and philosophically justifiable and defensible are divinely revealed and hence known in faith by most. Why would God reveal even those truths that man's mind can in principle know on its own? Because most men are hampered in actually grasping these truths through theistic arguments due to their ability, time, training, background, or opportunity to understand or evaluate them; and those *few* men that do arrive at the truth that God exists, do so only after a *long time*, and with a *mixture of truth and error*.¹⁷ Thus, Aquinas concludes, "Beneficially, therefore, did the divine Mercy provide that it should instruct us to hold by faith even those truths that the human reason is able to investigate. In this way, all men would easily be able to have a share in the knowledge of God, and this without uncertainty and error."¹⁸

Newman holds a version of Aquinas's view in

which there are arguments for the truth of Christian faith satisfying "logical criteria of truth." But, he adds, he is "proposing to engage in an investigation, from which, except as a point ruled by their authority, this consideration is necessarily excluded."¹⁹ In other words, "I am addressing myself to a question... as demanding a decision in the affirmative, viz that the *motivum credibilitatis* [motive of credibility] is [1] personal to each individual as well as [2] formal, public, and what may be called objective, after the manner of a science. My undertaking is founded on the assumption of such individual proof, and is directed to the drawing it out."²⁰ What is the nature of the individual proof to which Newman is referring? He explains:

A man's experiences are enough for himself, but he cannot speak for others.... He brings together his reasons and relies on them, because they are his own, and this is his primary evidence; and he has a second ground of evidence in the testimony of those who agree with him. But his best evidence is in the former, which is derived from his own thoughts.... He states what are personally his own grounds in natural and revealed religion, holding them to be so sufficient that he thinks that others also do hold them implicitly or in substance, or would hold them, if they inquired fairly, or will hold if they listen to him, or do not hold from impediments, invincible or not as it may be, into which he had no call to inquire.²¹

I think it is helpful to see that Newman is working here with a concept of subjective rationality that is to be distinguished from the objective rationality of an epistemic justification that is formal, public, and objective. Regarding the former, I take Newman to be saying something like the following: "To hold subjectively rational beliefs is to live up to your own intellectual standards." In short, "A belief is subjectively rational for person A if it is in accordance with A's belief policies. Otherwise, it is subjectively irrational for A." Justifications of this sort are "sui generis and varying with the individual."²² By contrast, objective rationality means that I am reflecting on certain beliefs in light of objectively correct standards. In other words, "I am deliberating about what is objectively rational to believe true or likely true."²³ Newman does not choose between the two. "Such individual conviction cannot rise from grounds altogether separate from the logical and formal body of evidence; it must be concurrent with and included in that moral and scientific [objective] proof. However, it is sui generis and varying with the individual."²⁴

THE NATURE AND ROLE OF EVIDENCE

In the eighteenth century, a time that Newman calls the “Age of Evidences,” the notable school of evidentialist apologetics, of which Paley and Tillotson were leading representatives, defended the rational basis of Christian faith, grounding it in a set of objective evidence.²⁵ The theistic evidentialist tended to reduce the Christian faith to a rationalist system of “reasoned evidences,” treating the Christian’s act of faith as nothing more than a cognitive activity in which faith is mainly the result of argument.

In the nineteenth century, as Newman points out, the Evidences of Religion, meaning thereby the systematic analysis of all the grounds on which we believe Christianity to be true, came to be disparaged by some for the following reasons. First, the evidences, for example, theistic arguments, proofs for the deity of Christ and the resurrection, can be seen differently from various perspectives, it was said, appearing more or less convincing with a change in perspective, and so a Christian interpretation of these evidences is going to differ from a Humean one.²⁶ Now, those who disparage the Evidences, says Newman, “consider that, as a general rule, religious minds embrace the Gospel mainly on the great antecedent probability of a Revelation, and the suitability of the Gospel to their needs.” “On the other hand,” Newman adds, they claim that “on men of irreligious minds Evidences are thrown away.”

Second, furthermore, according to Newman, “to insist much on matters which are for the most part so useless for any practical purpose, draws men away from the true view of Christianity, and leads them to think that Faith is mainly the result of argument... For is not this the error, the common and fatal error, of the world, to think itself a judge of Religious Truth without *preparation of heart*... Truth is to be approached without homage.”²⁷ Newman identifies here the basic assumption that is at the core of rationalistic apologetics. It has been expressed well by John Cottingham, namely, “truth or reality ought to be accessible *irrespective of the character and state of mind of the aspirant to truth*.”²⁸ Against this assumption Cottingham responds, “The truth yields itself only to those who are already to some extent in a state of receptivity and trust.”²⁹ The upshot of this objection is that giving pride of place to intellectual arguments may become destructive of true

religion. Cottingham echoes a Newmanian point: “The truths are made manifest not via impartial interrogation of the data but through an inner transformation of the subject.”³⁰ Certainly, preoccupied with evidences given their rationalism, evidentialist apologists fail to see that evidences do not oblige the reasoning mind to respond to God in faith, because faith’s knowledge of God cannot be created by reason. Are the evidences, then, useless, in short, of no service for coming to the rational acceptance of Christianity?

Newman responds negatively to this question. He wrote:

When we speak of faith objectively, we mean the Creed, which, viewed in all its explanations and developments, in its history and the controversies and comments to which it has given rise, is a vast doctrinal system or philosophy. And so again the arguments grounds in reason on which this Creed reposes form a vast objective system, known commonly among us by the name of the Evidences.³¹

Furthermore, Newman has no wish to isolate the grounds of individual conviction altogether from the logical and formal body of evidence just described. The *motivum credibilitatis* that is person—and situation specific “must be concurrent with and included in that moral and scientific proof.” Still, “it [the *motivum credibilitatis*] is sui generis and varying with the individual.”³² Thus, he readily agrees that interpreting the evidences is made relative to our standpoint, which includes the totality of relevant beliefs one already thinks one knows or justifiably believes, antecedent convictions, personal variables such as a rightly disposed mind, moral and intellectual virtues, and most important for the Christian interpretation of the evidences, the supernatural gift of faith, the existence of a right or renewed heart by the work of the Holy Spirit.³³ Moreover, Newman argues that the evidences of religion “may be of great service to persons in particular frames of mind.” For example,

[1] They often serve as a test of honesty of mind; their rejection being the condemnation of unbelievers. [2] Again, religious persons sometimes get perplexed and lose their way; are harassed by objections; see difficulties which they cannot surmount; are a prey to subtlety of mind or over-anxiety. Under these circumstances the varied proofs of Christianity will be a stay, a refuge, an encouragement, a rallying point for Faith, a gracious economy; [3] and even in the case of the most established Christian they are a source

of gratitude and reverent admiration, and a means of confirming faith and hope. Nothing need be detracted from the use of the Evidences on this score; much less can any sober mind run into the wild notion that actually no proof at all is implied in the maintenance, or may be exacted for the profession of Christianity.³⁴

Given, then, the person- and situation-specific nature of theistic arguments, Newman insists that the evidences may be sufficient to convince someone that his objections to Christianity are wrong, or at least sufficient to silence him. Typically, however, the evidence, for or against the truth of the message of the Gospel, is not of this compelling sort. Nonetheless, adds Newman, the evidence does have a determinate meaning, because it does bear one way more than another, say, for Christianity and against atheistic naturalism. Indeed, replies Newman to a contemporary critic of his views, that he does not have a skeptical spirit regarding “the force of arguments for religion,” as if to suggest “that atheism is a hypothesis equally consistent with the phenomena of the physical universe as the hypothesis of a creative intelligence.”³⁵

Yet, there is a problem here that Newman confronts head on, namely, the acceptance of Christian belief, he says, at least according to the way that faith and reason are commonly contrasted to each other, “does not demand evidence so strong as is necessary for what is commonly considered a rational conviction, or belief on the ground of reason.”³⁶ “Reason requires strong evidence before it assents,” he adds, “and Faith is content with weaker evidence.”³⁷ So how can faith be rational if it accepts less evidence than reason requires for a rational conviction?

Four Views of Reason

To see Newman’s answer to this question, we need to be clear on what he means, first, by reason, and second, by faith. In Newman’s reflections, reason seems to have several distinct meanings. One, reason means “the wisdom of the world,” what Newman variously calls “rebellious Reason,” “usurping reason,” “captious Reason,” or “secular reason,” which is the reason of secular minds, reasoning about religion based upon secular or naturalistic presuppositions. In sum, let us call this view of reason, according to Aidan Nichols, the notion of “absolute reason” that “refuses all revelation, as of set purpose.”³⁸

In this sense of the word, “faith may be viewed as opposed to [secular] reason.” Yet, “it must not be overlooked,” adds Newman, “that unbelief is opposed to Reason also. Unbelief, indeed, considers itself especially rational, or critical of evidence; but it criticizes the evidence of religion, only because it does not like it, and really goes upon presumptions and prejudices as much as Faith does, only presumptions of an opposite nature.”³⁹ In other words, the contrast between faith and reason is not a contrast between belief and unbelief, but between two different conceptions of rationality. Thus, unbelief is not a product of reason; rather, like faith, it is rooted in ontological or metaphysical or ultimately religious presuppositions. What we have, then, for Newman, are two conflicting views of what is properly taken to be rational, depending on what sort of metaphysical and religious stance you adopt.

In this connection and before going on to other senses of reason that Newman employs, it is helpful see that Newman also rejects the notion of “pure reason,” a notion that is “beloved of rationalism,” and which “belongs only with a state of pure nature.”⁴⁰ The notion of “pure nature” prescind from all concrete conditions and circumstances under which human reason actually functions. Critics of this notion argue that “pure reason” does not concretely exist because the natural reasoning of actual human beings is a religious act, as it were, being already directed in the actual conditions under which it operates by the central disposition of the heart, whether fallen or renewed, either for or against God. In short, human reason is not neutral. That human reason is not neutral is made abundantly clear by Newman in his *Apologia* where he considers human reason as it actually and historically functions: “reason as it acts in fact and concretely in fallen man.”⁴¹ Of course in one sense human reason may be used for good purposes. Newman explains, “I know that even the unaided reason, when correctly exercised, leads to a belief in God, in the immortality of the soul, and in a future retribution; but I am considering the faculty of reason actually and historically; and in this point of view, I do not think I am wrong in saying that its tendency is towards a simple unbelief in matters of religion.”⁴² Indeed, Newman underscores the point that human reason as it actually functions is the “wild living intellect of man,” the “aggressive, capricious, untrustworthy intellect,” that has “suicidal excesses.”⁴³

Furthermore, Newman’s conviction that human reason as it actually and historically functions is savagely wounded by the fall does not result in having a view

of reason that is radically corrupt and hence grossly unreliable. Rather, Newman subscribes to a notion of “natural reason” that “remains open and *disponible* where revelation is concerned; it is able to enter into a relation with some historically revealed situation[s] of [humanity], whether fallen or redeemed.”⁴⁴ What this means Newman makes clear in response to a contemporary critic arguing that “the faculty of reason can be exercised on false antecedents [presuppositions] as well as on true.” In other words, there is a right and a wrong use of reason. Newman explains:

What else can a man mean by speaking of a right use [of reason] but that there is a wrong?—right, because its antecedents are chosen rightly by the divinely enlightened mind, being such as intuitions, dictates of conscience, the inspired Word, the sophistry when its antecedents are determined by pride, self-trust, unbelief, human affection, narrow self-interest, bad education, or other mental agencies, which are found in the world and in the individual. It corroborates my doctrine of these two aspects of reason that, as if with the same drift of marking the broad difference between one aspect of the reasoning faculty and the other, ecclesiastical treatises speak of the “*lumen rationis*,” as they speak of the “*recta ratio*,” as if there was a use of reason which was really darkness.⁴⁵

In this light, we should understand the following distinctions of reason to be examples of natural reason with which Newman works. In addition, then, to the first sense of reason that Newman refers to as “the wisdom of the world,” and so on, he distinguishes a second use of reason, namely, reason in the sense of evidential reason. As I understand him, he means by this notion the evidentialist belief policy and its demand that the knower has cognitive access to what justifies his beliefs. I will return to this use of reason below. Three, by reason Newman also means

that faculty of the mind by which...knowledge of things external to us, of beings, facts, and events, is attained beyond the range of sense....It is, then, the faculty of gaining knowledge upon grounds given; and its exercise lies in asserting one thing, because of some other thing; and, when its exercise is conducted rightly, it leads to knowledge; when wrongly, to apparent knowledge, to opinion, and error.

In this sense of the word, Newman regards various ways of apparently gaining knowledge, those involving our sense perception, memory, various kinds of reasoning, and indeed, faith, as doxastic practices (to borrow a term from William Alston), which are ways of forming

beliefs about reality and epistemically evaluating them.⁴⁶ These doxastic practices are innocent until proven guilty, according to Newman. Regarding the doxastic practice of faith, Newman writes: “Now, if this be Reason, an act or process of Faith, simply considered, is certainly an exercise of Reason....It is an acceptance of things as real, which the senses do not convey, upon certain previous grounds; it is an instrument of indirect knowledge concerning things external to us.”⁴⁷ The doxastic practice of faith involves an exercise of reason insofar as faith involves belief, that is, thinking with assent, and hence to have a belief means that I am intellectually committed to the truth of some proposition or other that something is the case.

Four, Newman also uses reason to refer to the reflective power of the human mind explicitly engaged in “what are called philosophical inquiries, intellectual systems, courses of argument,” in short, two chief exercises of mind that are reasoning and arguing.⁴⁸ In this sense of the word, “Faith is independent of processes of reason.” It isn’t “a sort of conclusion [based] upon a process of reasoning.” “Faith, then, is not the same method of proof as Reason.” Newman explains, “Faith is an instrument of knowledge and action, unknown to the world before, a principle *sui generis*, distinct from those which nature supplies, and in particular (which is the point into which I mean to inquire) independent of what is commonly understood by Reason.”⁴⁹ So faith’s knowledge of God is a gift of God’s grace, and thus cannot be created by reason, where reason takes the form of arguments.

Yet, Newman defends the mass of the faithful, with their vast ignorance of the proofs of the Christian faith and their firm conviction to it, against the accusation of fideism.⁵⁰

Faith certainly does seem, in matter of fact, to exist and operate quite independently of Reason [in this second sense]. [Nonetheless,] [w]ill anyone say that a child or uneducated person may not savingly act on Faith, without being able to produce reasons why he so acts? What sufficient view has he of the Evidences of Christianity? What logical proof of its divinity? If he has none, Faith, viewed as an internal habit or act, does not depend upon inquiry and examination, but has its own special basis.⁵¹

Newman returns here to the question that motivated him from the start of his inquiries regarding the rationality of Christian belief.

Revelation, Testimony, and Faith

What, then, is the epistemic basis of faith, according to Newman? In short, divine revelation is the basis of faith. Most significant, divine revelation may be understood as a species of testimony. Looking back to the doxastic practice of faith, I will now flesh out a little bit more how this practice involves an acceptance of statements that something is the case. In Newman’s sermon, “Religious Faith Rational,” he describes faith as “*reliance on the words of another*.”⁵² He aims to defend “faith as trust in another,” but he puts the emphasis on “faith is no irrational or strange principle of conduct in the concerns of this life.” Indeed, there are many things that we would not know without trusting others. The importance of testimony subordinates seeing to hearing in the acquisition of justified true belief about a whole range of matters, scientific, historical, moral, theological, and many others.⁵³ In John Paul’s own words, “there are in the life of a human being many more truths which are simply believed than truths which are acquired by way of personal verification.”⁵⁴ We still need to ask, “What, then, convinces us of it? the *report of others*?—this trust, this faith in testimony which, when religion is concerned, then, and only then, the proud and sinful world fain call irrational.”⁵⁵ Newman replies, “We act upon our trust in them implicitly, because common sense tells us, that with proper caution and discretion, faith in others is perfectly safe and rational.”⁵⁶ But what is it about the report of others that makes it rational to accept the word of another?

In light of this question, I am now ready to ask what, then, is testimony? And why is it reasonable for one to accept the word of another, in short, testimony, as a source of epistemic justification? Newman never actually gives us a definition of testimony helping us to answer this last question. Helpful in this connection is, however, Kevin Vanhoozer’s succinct definition of testimony, which holds also for our convictions grounded in divine testimony. Enlisting his definition, we can say that testimony is “a speech act in which the witness’s very act of stating *p* is offered as evidence ‘that *p*’, it being assumed that the witness has the relevant competence or credentials to state truly ‘that *p*’.”⁵⁷ The testimony of such persons has “assertoric authority,” meaning thereby “telling someone *that something is the case*.”⁵⁸ On this account of testimony, we accept the truth of statements that such-and-such is the case, the truth of statements that we do not see directly for our-

selves but which it is reasonable to accept on the trustworthy word of others who are “in a *privileged position to know it*.”⁵⁹ Newman suggests this notion of assertoric authority as well when he writes, “We constantly believe things even against our own judgment; i.e. when we think our informant likely to know more about the matter under consideration than ourselves, which is the precise case in the question of religious faith. And thus from reliance on others we acquire knowledge of all kinds and proceed to reason, judge, decide, act, form plans for the future.”⁶⁰ Appeals to testimonial authority, then, can provide a reason for belief. In short, therefore, the doxastic practice of faith involves believing what God has revealed, because he has revealed it.⁶¹

Still, there remains to ask what is the meaning here of belief in the doxastic practice of faith? Says John Paul,

“To believe” means to accept and to acknowledge as true and corresponding to reality the content of what is said, that is, the content of the words of another person...by reason of his credibility. This credibility determines in a given case the particular authority of the person—the authority of truth. So then by saying “I believe”, we express at the same time a double reference: to the person and to the truth; to the truth in consideration of the person who *enjoys special claims to credibility*.⁶²

Credibility, then, is “*the property of a testimony*.”⁶³ For it is the person to whose testimony the assent is given in view of his special claim to credibility, resulting from his possession of the relevant credentials or competence to state truly the truth of statement that something is the case. Believing, then, involves not only believing that something is true but also believing in a person, the latter characteristically being thought of as trust. “«Faith» then emerges as the appropriate name of those acts of mental consent in which the element of trust is prominent.” B.B. Warfield adds, “In what we call religious faith this prominent implication of trust reaches its height.”⁶⁴

In its higher applications (to borrow Warfield’s way of phrasing it), faith, believing, says John Paul, “involves an interpersonal relationship and brings into play not only a person’s capacity to know [the truth] but also the deeper capacity to entrust oneself to others, to enter into a relationship with them which is intimate and enduring.”⁶⁵ Thus, “to believe in,” “to have faith in,” “to entrust yourself to,” comes to mean, in the pope’s view, particularly in the case of divine faith, not simply a knowledge of propositional truths, but also a personal

commitment to God, both a propositional knowledge and an affective trust, indeed, an act of the whole man. As John Paul says, “In knowing by faith, man accepts the whole supernatural and salvific content of revelation as true. But at the same time, this fact introduces him into a profound personal relationship with God who reveals Himself.”⁶⁶ Thus through believing man participates in the knowledge of God himself.

This assertion brings us back to the idea of the personalist character of faith for John Paul II, a view that Aquinas himself held.⁶⁷ Briefly, “by saying ‘I believe’, we express at the same time a double reference: to the person and to the truth; to the truth in consideration of the person who *enjoys special claims* to credulity.”⁶⁸ So, faith does not merely believe a proposition, believing that *p* is true, but rather believing a person that what he says about that *p* is true. Faith necessarily involves both a propositional attitude and an attitude toward a person. This, too, is Aquinas’s view. “Whoever believes, assents to someone’s words; hence in every form of belief, the person to whose words assent is given seems to hold the principal place and to be the end, as it were, while the things by holding which one assents to that person hold a secondary place.”⁶⁹ Hence, for Aquinas, “it belongs to faith to believe something and in someone.”⁷⁰ At one and the same time, then, since God is the source of the credibility of what he reveals, the knowledge that is proper to faith also involves men giving their assent to divine testimony, namely, to *God* who makes himself known in what he reveals. In this singular faith-knowledge “the intellect and will exercise their spiritual character” by “fully and integrally accept[ing] the truth of things revealed, because *God offers himself* as their guarantee.”⁷¹ The believer is certain that the truth made known to us by revelation is true, *because* God is true, faithful, trustworthy, being himself the guarantor of that truth, and not because he naturally sees its truth to be self-evident or can prove its truth. Furthermore, the totally free gift of God’s revealed truth “requires that it be accepted as a declaration of love.”⁷² The upshot here is summarily stated by John Henry Newman: “We believe because we love.”⁷³

So it is entirely reasonable for the great majority of people, say, to believe in God, not by engaging in philosophical proofs so that they may come to see for themselves the truth of the proposition that “God exists,” but by relying on testimony, by trusting the word of another, indeed, that the words of men actually reveal to us the Word of God. But, asks Newman, “How are we to know whether they speak truth or not?” Furthermore,

“To believe this, is it according to reason or against it?” In short, concludes Newman, “what are our reasons for believing the Bible came from God?”⁷⁴ In response to this question, Newman makes clear that believing that God has spoken in scripture is not “merely founded on our belief in the word of such persons as tell us Scripture came from God.”⁷⁵ Rather, we believe that God has spoken in scripture, according to Newman, “primarily because we actually feel His presence in our consciences bidding us obey Him.” In other words, Newman sketches here a version of the classical Christian argument that God so transforms persons internally by the witness of the Holy Spirit in a man’s conscience that he recognizes scripture as the Word of God. Thus, the willingness of a man’s conscience to believe, to respond to the Word of God *qua* Word of God, and not merely the word of men, is a gift of God’s grace.

There remains to ask whether Newman avoids the charge of circular reasoning in believing that God has spoken in scripture. We find a similar line of reasoning to Newman’s in the great master of dogmatic theology, the late nineteenth and early twentieth century Dutch theologian Herman Bavinck (1854–1921). He writes:

To the question “Why do you believe?” Christians reply, “Because God has spoken” (*Deus dixit*). They cannot indicate another, deeper ground. If you then ask them, “But why do you believe that God has spoken, say, in Scripture?” they can only answer that God so transformed them internally that they recognize Scripture as the word of God. But having said that, they [have] said it all. The witness of God is the ground, but God’s grace, the will, is the cause of faith.⁷⁶

This kind of reasoning has often been charged with circularity: “Why do you believe that scripture is the word of God?” “Because this is the testimony to me of the Holy Spirit.” “And why do you believe that this is the testimony to you of the Holy Spirit?” “Because scripture tells us that it is the Holy Spirit that testifies that scripture is the word of God.” Still, in order to avoid the charge of circularity, Nicholas Wolterstorff rightly appeals to Bavinck’s distinction in the last sentence of the above quotation between *ground* and *means*, or *reason* and *cause* of the belief in order to avoid that charge.⁷⁷ Says Bavinck, “the testimony of the Holy Spirit is not the final ground but the means of faith. The ground of faith is, and can only be, Scripture, or rather, the authority of God.”⁷⁸ Wolterstorff explains the point of this set of distinctions in Bavinck’s religious epistemology: “When I say that I

believe that Scripture is the word of God because this is the testimony to me of the Holy Spirit, I am specifying the *cause* of my belief. When I say that I believe the Spirit caused the belief because Scripture attributes faith in Scripture as the word of God to the Spirit, I am specifying the *reason* for my belief.”⁷⁹ Wolterstorff is right: “Bavinck’s answer to the charge of circularity seems to me perceptive and decisive.” Hence, Wolterstorff’s argument successfully rescues Newman from the charge of circularity. Newman describes faith as

assenting to a doctrine as true, which we do not see, which we cannot prove, because God says it is true, who cannot lie... He who believes that God is true, and that this is His word, which He has committed to man, has no doubt at all. He is as certain that the doctrine taught is true, as that God is true; and he is certain, *because* God is true, *because* God has spoken, not because he sees its truth or can prove its truth.⁸⁰

How Can Faith Be Rational?

Although reason is not the basis of faith, it can be judged by reason and found reasonable, without being the source of faith. Newman does not retreat to faith so that Christian beliefs can no longer be subjected to rational scrutiny. “I observe,” says Newman,

that undeniable though it be, that reason has a power of analysis and criticism in all opinion and conduct, and that nothing is true or right but what may be justified, and, in a certain sense, proved by it, and undeniable, in consequence, that, unless the doctrines received by Faith are approvable by Reason, they have no claim to be regarded as true, it does not therefore follow that Faith is actually grounded on Reason in the believing mind itself.

“A judge does not make men honest, but acquits and vindicates them; in like manner,” adds Newman, “Reason need not be the origin of Faith, as Faith exists in the very persons believing, though it does test and verify it.” We must not make the mistake of confusing “a critical for a creative power.”⁸¹

It is against the background of the second meaning of reason adumbrated above, that we can now address Newman’s question of how faith can be rational when it seems to accept less evidence than reason requires for a rational conviction. His reply goes straight to his frontal attack against evidentialism and its demand that the

knower has cognitive access to what justifies his beliefs.

Occasionally, says Newman, the evidence for some conclusion is sufficient, indeed overpowering; and then any rational person must be convinced, or at least silenced. Commonly, however, a judgment about the evidence for or against Christianity is not of this overpowering nature, according to Newman. The evidence does have a determinate meaning, for a Christian interpretation rather than a naturalist one, but the interpretation is not based on overwhelming evidence; rather it is based on the assessment of probabilities. And these assessments, for Newman, must take into account any belief that bears on the degree of probability. Consider Newman’s attempt to expose the main fallacy in David Hume’s celebrated argument against miracles. Hume attaches no antecedent improbability to the possibility that the biblical witnesses regarding miracles should deceive; this is more likely than that the laws of nature should be suspended. Still, for one who accepts the Christian faith, argues Newman, “the main probability [turns] the other way,—viz . the likelihood, *a priori*, that a revelation should be given.” Here, then, is Newman’s view of the interplay between faith and reason that shows “how faith is and is not according to Reason.”

Newman considers Christian belief in miracles to be a rational conviction. For Newman, the putative evidence for miracles

taken together with the antecedent probability that Providence will reveal Himself to mankind, such evidence of the fact, as is otherwise deficient, may be enough for conviction, even in the judgment of Reason. But it need not be enough apart from that probability. That is, Reason, weighing evidence only, or arguing from external experience [alone], is counter to Faith; but admitting the full influence of the moral feelings it concurs with it.⁸²

Thus, the significance of evidence will depend partly on whether we are judging it in light of our antecedent convictions. This, too, is the case respecting the Evidences of Revelation; it is, says Newman, “antecedent probability that gives meaning to those arguments from facts which are commonly called the Evidences of Revelation.” The evidences will have a much weaker power to persuade if I rigidly segment my thinking from adverting to my Christian beliefs. So Newman affirms that “whereas mere probability proves nothing, mere facts persuade no one;... probability is to fact, as the soul to the body;... mere presumptions may have no force, but... mere facts have no warmth.”⁸³

Newman’s account is surely a sound one. Brian

entertain any proposition with greater assurance than the proofs [deductive or inductive] it is built upon will warrant.”⁹⁰ He thinks Locke’s view of the human mind is “theoretical and unreal.”⁹¹ “Reasonings and convictions which I deem natural and legitimate,” Newman wrote, “he apparently would call irrational, enthusiastic, perverse, and immoral.”⁹² For Locke, Newman notes, many of our most ordinary everyday beliefs fall outside the scope of such proofs, and so we do not strictly know them to be true. Yet, Locke admitted, for all practical purposes we behave as if we did know them. To make a contemporary comparison: we are as certain that Hitler and Stalin were morally wrong as we are of the simple truths of arithmetic or gravity. Locke affirms and sanctions, Newman points out, this very paradox. “Some of them *border so near* upon certainty, that we *make no doubt at all* about them, but *assent* to them *as firmly*, and act according to that assent as resolutely, *as if they were infallibly demonstrated*, and that our knowledge of them was perfect and certain.”⁹³ “These *probabilities* rise so near to certainty, that they *govern our thoughts as absolutely*, and influence all our actions as fully, as *the most evident demonstration*; and in what concerns us, we make little or no difference between them and certain knowledge. *Our belief thus grounded, rises to assurance.*”⁹⁴ The rationalist belief policy of holding beliefs with a confidence proportionate to the evidence is theoretical and unreal, because we act in practical life upon other and less exacting principles—according to Newman. The rationalist, like Locke, is unable to practice what he preaches. To Locke, therefore, Newman puts the question:

How then is it not inconsistent with right reason, with the love of truth for its own sake, to allow, in his [Locke’s] words quoted above, certain strong “probabilities” to “govern our thoughts as absolutely as the most evident demonstrations”? How is there no “surplusage of assurance beyond the degrees of evidence” when in the case of those strong probabilities, we permit “our belief, thus grounded, to rise to assurance,” as he pronounces we are rational in doing?⁹⁵

The only escape Newman saw from the self-appointed dilemma of classical rationalism was found in accepting an enlarged view of rationality. Knowing something does not always mean that I know that I know. We know much more than we can tell. This claim brings us to Newman’s reflections on rationality, his attempt to broaden the concept of rationality, too narrowly defined by classical rationalism. As John Hick once put it, “In Newman’s terminology, we must recognize the validity of ‘informal’ as well as ‘formal’ inference.”⁹⁶

2. IMPLICIT AND EXPLICIT REASON

pared down for my purpose here, two distinct but related points inform Newman’s theory of rationality. One, our reasoning is often informal, implicit, without conscious reasoning or formal argument, but it is nonetheless rational for being so.

It is plain that formal logical sequence is not in fact the method by which we are enabled to become certain of what is concrete; and it is equally plain... what the real and necessary method is. It is the cumulation of probabilities, independent of each other, arising out of the nature and circumstances of the particular case which is under review; probabilities too fine to avail separately, too subtle and circuitous to be convertible into syllogisms, too numerous and various for such conversion, even were they convertible. As a man’s portrait differs from a sketch of him, in having, not merely a continuous outline, but all its details filled in, and shades and colours laid on and harmonized together, such is the multiform and intricate process of ratiocination, necessary for our reaching him as a concrete fact, compared with the rude operation of syllogistic treatment.⁹⁷

Two, our reasoning concerning matters of fact, and religious convictions are no exception here, involves a personal or subjective element; it is person- and situation-specific.

Thus in concrete reasonings we are in great measure thrown back into that condition, from which logic proposed to rescue us. We judge for ourselves, by our own lights, and on our own principles; and our criterion of truth is not so much the manipulation of propositions, as the intellectual and moral character of the person maintaining them, and the ultimate silent effect of his arguments or conclusions upon our minds.⁹⁸

As to the first point, Newman distinguishes two distinct processes of reasoning—it is one thing to feel, to think, to reason, and to know; it is another to know that we feel, and think, and reason, and know. “All men reason,” Newman points out, “but all men do not reflect upon their own reasonings.” In other words, he adds pointedly, “all men have a reason, but not all men can give a reason.”⁹⁹ The difference here is between concrete, informal reasoning that depends on antecedent assumptions and expectations and formal reasoning that depends on specific arguments and evidence. Engaging

Davies illustrates it well. “Suppose I am given evidence which, considered on its own, makes it highly probable that Jones committed a murder. Let us also suppose that I believe Jones to be a gentle and kind man, someone who regularly goes out of his way to help people, someone who has grieved over murder and lamented it. In that case, I have good reason to oppose his detractors and I cannot agree with them without abandoning my beliefs. If I decline to abandon them I cannot conclude that Jones committed the crime.”⁸⁴ In fact, I would add, given my beliefs about Jones I would be behaving quite irrationally if I did not advert to these beliefs in estimating the probability that Jones committed the crime.

Yet, there is much more to Newman’s reply. On the one hand, it seems that Newman is merely saying that there should be an interplay between faith and reason that in no way dilutes the demands of reason. On the other hand, it becomes clear that Newman is attacking the very belief policy of evidentialism along with its demand that a rational conviction depends on the knowing agent having cognitive access to what justifies his beliefs. His rejection of evidentialism is clear from the following passages:

Faith is a principle of action, and action does not allow time for minute and finished investigations. We may (if we will) think that such investigations are of high value; though, in truth, they have a tendency to blunt the practical energy of the mind, while they improve its scientific exactness; but whatever be their character and consequences, they are impracticable in action. Diligent collection of evidence, sifting of arguments, and balancing of rival testimonies, may be suited to persons who have leisure and opportunity to act when and how they will; they are not suited to the multitude. Faith, then, as being a principle for the multitude and for conduct, is influenced... less by evidence, more by previously-entertained principles, views, and wishes.⁸⁵

And in the *Grammar of Assent*, Newman writes:

Life is not long enough for a religion of inferences; we shall never have done beginning, if we determine to begin with proof. We shall ever be laying our foundations... We shall never get at our first principles. Resolve to believe nothing, and you must prove your proofs and analyze your elements, sinking farther and farther, and finding “in the lowest depth a lower deep,” till you come to the broad bosom of skepticism... Life is for action. If we insist on proofs for every thing, we shall never come to action; to act you must assume, and that assumption is faith... Knowledge of premises,

and inferences upon them,—this is not to *live*. It is very well as a matter of liberal curiosity and of philosophy to analyze our modes of thought: but let this come second, and when there is leisure for it, and then our examinations will in many ways even be subservient to action. But if we commence with scientific knowledge and argumentative proof, or lay any great stress upon it as the basis of personal Christianity, or attempt to make men moral and religious by libraries and museums, let us in consistency take chemists for our cooks, and mineralogists for our masons.⁸⁶

Indeed, for Newman, we are justified in believing most of the beliefs that form the stock in trade of ordinary everyday life, though we are incapable of justifying them satisfactorily, not to say logically. Newman has in mind such general beliefs in self-consciousness, enduring physical objects, other persons, the reality of the past, and many others. He writes:

[O]f course we all believe, without any doubt, that we exist; that we have an individuality and identity all our own; that we think, feel, and act, in the home of our minds;... Nor is the assent which we give to facts limited to the range of self-consciousness. We are sure... that our own self is not the only being existing; that there is an external world; that it is a system with parts and a whole, a universe carried on by laws; and that the future is affected by the past. We accept and hold with an unqualified assent, that the earth, considered as a phenomenon, is a globe; that all its regions see the sun by turns; that there are vast tracts on it of land and water; that there are really existing cities on definite sites, which go by the names of London, Paris, Florence, and Madrid.⁸⁷

Clearly, says Newman, the great majority of these beliefs have neither resulted from, nor can they be proved by, demonstrative reason. Yet, we may be justified in believing them even though we are not ourselves in a position to give a justification. We can know *p* without being able to prove *p*. “There are many truths in concrete matters, which no one can demonstrate, yet every one unconditionally accepts.”⁸⁸ This seems obvious to Newman, but he fully realizes, as Roger Trigg puts it, that the “notions of rationality and proof have been drawn so tightly that most of the beliefs that apparently form the bedrock of our lives cannot be judged rational.” “The assumptions which we bring to our experience,” adds Trigg, “and according to which our experience makes any sense, cannot, it seems, be justified.”⁸⁹

In this connection, Newman turns his critical attention to John Locke’s belief policy that I should “not

in this former reasoning is legitimate for someone even without his necessarily being able to provide any analysis of his reasoning or even produce his reasons. John Hick, with his customary clarity, explains Newman's point about recognizing the validity and importance of implicit or unconscious processes of reasoning.

For the judgments of the experienced—for example, the experienced mechanic, soldier, farmer or physician—are often not consciously reasoned but are instead arrived at with an apparently intuitive directness. The aged shepherd is probably quite unable to explain why he feels sure that it will rain tomorrow, and yet his judgment is based upon evidence, in the form of a multiplicity of meteorological signs which he has learned by experience to interpret aright. His feeling represents the outcome of a reasoning process of the form “if *p*, *r*, *s*, *t*, etc., then very probably *q*”; but this process is habitual and unconscious. Indeed the more experienced the judging mind the less does it need consciously to rehearse and scrutinize the processes leading to its conclusion. What Newman is rightly concerned to stress in this connection is that although the man of experienced judgment may be unable to give public, or even private, expression to his train of reasoning, his conclusions are not on that account any the less rational.¹⁰⁰

The application to religious belief is not far to seek. Keeping in sight Newman's distinction between reasoning as the concrete exercise of the implicitly reasoning mind striking out toward conclusions, and reasoning upon our reasonings, two exercises of the mind that we can describe as reasoning and arguing, it makes sense for Newman to say that men can reason well but argue badly. The professed grounds for our beliefs are no sufficient measures of their real grounds. “And in like manner, though the evidence with which Faith is content is apparently inadequate to its purpose, yet this is no proof of real weakness or imperfection in its reasoning.” “It seems to be contrary to Reason, yet is not,” Newman notes; “it is but independent of and distinct from what are called philosophical inquiries, intellectual systems, courses of argument, and the like.”¹⁰¹ In other words, explicit reasoning or arguing is limited because we have more assurance that our Christian beliefs are grounded in reality than in any argument used to support such beliefs.

The distinction here is crucial for Newman: between the metaphysical status of what we believe in and our own ability to give a justification for the belief. In Newman's own words, “Faith cannot exist without grounds or without an object; but it does not follow

that all who have faith should recognize, and be able to state what they believe, and how. Nor, on the other hand, because it is not identical with its grounds and its object, does it therefore cease to be true Faith, on its recognizing them.” And again, commenting on the “simple believer,” he writes: “[F]aith is independent, not of objects or grounds (for that is impossible), but of perceptible, recognized, producible objects and grounds: they believed, they could not say what or why. True faith, then, admits, but does not require, the exercise of what is commonly understood by Reason,” meaning thereby investigation, argument, or proof.¹⁰²

Does faith then need reason? If so, then, in what sense? Faith does need reason, according to Newman, because “[m]en do not choose light or darkness without Reason, but by an instinctive Reason, which is prior to argument and proof.”¹⁰³ “Faith,” he adds, “though in all cases a reasonable process, is not necessarily founded on investigation, argument, or proof; these processes being but the explicit form which the reasoning takes in the case of particular minds.”¹⁰⁴ In other words, faith is a cognitive activity implying a confidence in a man's mind that the thing believed is really true, and in this sense faith does need reason. If, however, Newman points out, reason is taken to mean rational demonstration, then, reason is not necessary for the assent of faith.

Newman is right about this—securing justification for religious beliefs through arguments not only limits the range of beliefs we can be said justifiably to believe, but it also severely restricts the number of people who can actually justify the religious beliefs, not to say ordinary beliefs, they hold. “In matter of fact, *how* many men do we suppose, in a century, out of the whole body of Christians, have been primarily brought to belief, or retained in it, by an intimate and lively perception of the force of what are technically called the Evidences? And why are there so few?”¹⁰⁵ Quite simply, there are so few because faith commonly rests on highly personal and subjective factors that are too numerous, complex, and subtle to be translated into syllogistic arguments, as Newman himself said above.

This conclusion brings us to Newman's second point about how reasoning regarding matters of fact, which includes religious convictions, involves a personal or subjective element. But this aspect is not unique to religious conviction; it is quite common among men. Witness the moral, political, and social disagreements among them. These disagreements stem primarily not from a lack of logical power in the multitude of men.

Rather, they stem, chiefly, from the different presuppositions, which are of a personal character, that govern the exercise of their reasoning. “Such is the diversity with which men reason, showing that Faith is not the only exercise of Reason, which approves itself to some and not to others, or is, in the common sense of the word, irrational.”¹⁰⁶ So this conclusion, says Newman, does not imply some deficiency of rationality in faith's exercise of reason, since it is claimed that reasoning concerning concrete matters of fact function in similar ways. Says Newman, “In any inquiry about things in the concrete, men differ from each, not so much in the soundness of their reasoning as in the principles which govern its exercise, that those principles are of a personal character, [and] that where there is no common measure of minds, there is no common measure of arguments.”¹⁰⁷

Newman admits that there is a serious difficulty with his view. It can look as if one's most basic commitments involve an appeal to faith that is entirely personal and is not required of others, because I cannot give grounds that can at least in principle persuade others of the rightness of my stance. But without an appeal to reason, can I expect others to take my beliefs seriously, let alone adopt them? In Newman's own words from the *Oxford Sermons*,

[S]uch a view may be made an excuse for all manner of prejudice and bigotry, and leads directly to credulity and superstition; and, on the other hand, in the case of unbelief, it affords a sort of excuse for impenetrable obduracy. Antecedent probabilities may be equally available for what is true, and what pretends to be true, for a revelation and its counterfeit, for Paganism, or Mahometanism, or Christianity. They seem to supply no intelligible rule what is to be believed, and what not; or how a man is to pass from a false belief to a true.... How are we to manage (as I may say) the Argument from Presumption for Christianity, so as not to carry it out into an argument against it?¹⁰⁸

Newman's answer in the *Grammar of Assent* to his own troubling question is subtle and clarifying, but questions remain unanswered. He denies that he has given up attempting a demonstrative proof of Christianity.

Truth certainly, as such, rests upon grounds intrinsically and objectively and abstractedly demonstrative, but it does not follow from this that the arguments producible in its favour are unanswerable and irresistible. These latter epithets are relative, and bear upon matters of facts; arguments in themselves ought to do, what perhaps in the particular case they cannot do. The fact of revelation is in itself demonstrably true, but

it is therefore true irresistibly; else, how comes it to be resisted? There is a vast distance between what it is in itself, and what it is to us. Light is a quality of matter, as truth is of Christianity; but light is not recognized by the blind, and there are those who do not recognize truth, from the fault, not of truth, but of themselves.¹⁰⁹

Newman therefore wishes to “prove Christianity in the same informal way in which I can prove for certain that I have been born into this world, and that I shall die out of it.”¹¹⁰ These ordinary everyday beliefs are not accepted by me because of formal proofs, or argumentative reasoning, and thus my assent to them and others like these is commonly an act, not of logical inference but of what Newman has called implicit reason. Clear enough, says Newman, in reasoning regarding matters of fact, and this would include religious convictions, assent cannot be compelled by demonstrative proof. Rather, it is from “an *accumulation* of various probabilities... that... we may construct legitimate proof, sufficient for certitude,” because, he adds, “we are not justified, in the case of concrete reasoning and especially of religious inquiry, in waiting till such logical demonstration is ours, but on the contrary are bound in conscience to seek truth and to look for certainty by modes of proof, which, when reduced to the shape of formal propositions, fail to satisfy the severe requisitions of science.”¹¹¹

With a sense of disappointment, however, Newman explains:

It is not wonderful then, that, while I can prove Christianity divine to my own satisfaction, I shall not be able to force it upon any one else. Multitudes indeed I ought to succeed in persuading of its truth without any force at all, because they and I start from the same principles, and what is a proof to me is a proof to them; but if any one starts from any other principles but ours, I have not the power to change his principles, or the conclusion which he draws from them, any more than I can make a crooked man straight.¹¹²

What this suggests to us, says Newman, is “that there is something deeper in our differences than the accident of external circumstances; and that we need the interposition of a Power, greater than human teaching and human argument, to make our beliefs true and our minds one.”¹¹³

Newman's reply, then, to his own objection makes it apparent that, to use traditional categories, a belief in God, indeed in Christ, is a matter of faith not reason. He concentrates on the supernatural gifts of an inner, subjective faith, granted by the Holy Spirit, rather than the claims of reason. Christian faith is made the starting

point, rather than the universal claims of reason. “The divinely-enlightened mind sees in Christ the very Object whom it desires to love and worship,—the Object correlative of its own affections; and it trust Him, or believes, from loving Him.”¹¹⁴ Newman follows up this point with some pointed commentary on the second chapter (verses 1–4) of St. Paul’s First Letter to the Corinthians.

As a whole, it distinctly teaches the nothingness of natural Reason, and the all-sufficiency of supernatural grace in the conversion of the soul. ‘And I, brethren, when I came to you, came not with excellency of speech or of wisdom’, (with discussion, argument, elaborate proof, cumulation of evidence), ‘declaring unto you the testimony of God. For I determined not to know anything among you, save Jesus Christ, and Him crucified. . . . And my speech and my preaching was not with enticing words of man’s wisdom’, not with the reasoning of the schools, ‘but in demonstration of the Spirit, and of power’, with an inward and spiritual conviction, ‘that your Faith should not stand in the wisdom of men’s natural Reason, ‘but in the power of God’, His regenerating and renewing influences. . . . Here a certain moral state, and not evidence, is made the means of gaining the Truth, and the beginning of spiritual perfection. . . . Surely the faculty by which we know the Truth is here represented to us, not as a power of investigation, but as a moral perception. . . . [It is] holiness, dutifulness, or the new creation, or the spiritual mind, however we word it, and not Reason, [that] is the eye of Faith, the discriminating principle which keeps it from fastening on unworthy objects, and degenerating into enthusiasm or superstition.’¹¹⁵

The central question Newman’s religious epistemology raises is as follows: With his denial of the role of explicit reason for discriminating between true and false beliefs, and with his emphasis on divine faith, is Newman in danger of retreating from claims to objective truth, or at least from the claim that he is justified in holding certain beliefs to be objectively true? In other words, with Newman’s emphasis on the subjective and the personal, and with his concession that my faith is my faith, and that he cannot give grounds that may convince others, does his position quickly corrode all claims to objective truth? Is truth and justification so particularized that Newman cannot give a coherent account of the universal and transcendent value of revealed truth? I’ll turn to this problem, which is the central point of my article, in the concluding section of

this paper. For now I want to consider briefly, in section 3, Newman’s parity argument as a response to the objection that there is some deficiency of rationality in accepting Christian beliefs.

3. PARITY ARGUMENT

Anticipating this objection, Newman consistently defended his claim that religious belief is in no worse state than any other form of belief. He argues for parity between religious belief, on the one hand, and beliefs formed by the senses, memory, and reasoning on the other. Religious belief is in the same epistemic condition as any other mode of belief formation. “Nothing,” writes Newman, “which Scripture says about Faith, however startling it may be at first sight, is inconsistent with the state in which we find ourselves by nature with reference to the acquisition of knowledge generally,—a state in which we must assume something to prove anything, and can gain nothing without a venture.”¹¹⁶

Newman regards these various ways of gaining knowledge, those involving our sense perception, memory, various kinds of reasoning, and indeed, faith, as doxastic practices, which are ways of forming beliefs and epistemically evaluating them. He argues that in fact it is impossible to give a noncircular justification of the whole practice of perception, of memory, of reasoning, and, *a fortiori*, of faith. “However full and however precise our producible grounds may be, however systematic our method, however clear and tangible our evidence, yet when our argument is traced down to its simple elements, there must ever something be assumed ultimately which is incapable of proof, and without which our conclusion will be as illogical as Faith is apt to seem to men of the world.”¹¹⁷ Newman’s point is that justification has to come to an end in each of these doxastic practices—perception, memory, and reason, testimony—and finally we have to take something on trust, and this means that religious belief is in no worse state than any other form of belief—everyone has to appeal to faith or trust, argues Newman, in some way or other. This is stated explicitly when he says, “To hear some men speak (I mean men who scoff at religion), it might be thought we never acted on Faith or Trust, except in religious matters; where as we are acting on trust every hour of our lives. . . . First our senses, memory, and reasoning powers; then other authorities:—so that,

in fact, almost all we do, every day of our lives, is on trust, i.e. *faith*.”¹¹⁸ Further, as we showed earlier, there is testimony, whereby we rely on the words of another, by believing what they tell us about what is the case. This is no irrational or strange principle of conduct in the concerns of this life, according to Newman. We learn most of what we know from testimony—our grasp of history, geography, science, and more.

For when we consider the subject attentively, how few things there are which we can ascertain for ourselves by our own senses and reason! After all, what *do* we know without trusting others? We know that we are in a certain state of health, in a certain place, have been alive for a certain number of years, have certain principles and likings, have certain persons around us, and perhaps have in our lives traveled to certain places at a distance. But what do we know more? Are there not towns (we will say) within fifty or sixty miles of us which we have never seen, and which, nevertheless, we fully believe to be as we have heard them described? To extend our view:—we know that land stretches in every direction of us, a certain number of miles, and then there is sea on all sides; that we are in an island. But who has *seen* the land all around, and has proved for himself that the fact is so? What, then, convinces us of it? The *report of others*,—this trust, this faith in testimony which, when religion is concerned, then, and only then, the proud and sinful would fain call irrational. . . . And it is therefore very much to our purpose to accustom our minds to the fact, on which I have been insisting, that almost every thing we do is grounded on mere trust in others.¹¹⁹

For Newman, all these doxastic practices are reliable sources of knowledge of an external reality; they are faculties of gaining knowledge upon grounds given, and their exercise lies in asserting one thing, because of some other thing, and when they are functioning properly, they lead to knowledge; when wrongly, to apparent knowledge, to opinion, and error. What is more, he says, there is an inverse relation between the type of knowledge gained—say, the acquisition of higher knowledge such as the knowledge of divine revelation—and the amount of evidence available supporting our claims to knowledge. “Let it be considered, that the following law seems to hold in our attainment of knowledge, that according to its desirableness, whether in point of excellency, or range, or intricacy, so is the vagueness of the evidence on which it is received.” Newman explains,

We are so constituted, that if we insist upon being as sure as is conceivable, in every step of our course,

we must be content to creep along the ground, and can never soar. If we are intended for great ends, we are called to great hazards; and, whereas we are given absolute certainty in nothing, we must in all things choose between doubt and inactivity, and the conviction that we are under the eye of One who, for whatever reason, exercises us with the less evidence when He might give us the greater. He has put it into our hands, who loves us; and He bids us examine it, indeed, with our best judgment, reject this and accept that, but still all the while as loving Him in our turn; not coldly and critically, but with the thought of His presence, and the reflection that perchance by the defects of the evidence He is trying our love of its matter; and that perchance it is a law of His Providence to speak less loudly the more He promises. For instance, the touch is the most certain and cautious, but it is the most circumscribed of our senses, and reaches but an arm’s length. The eye, which takes in a far wider range, acts only in the light. Reason, which extends beyond the province of sense or the present time, is circuitous and indirect in its conveyance of knowledge, which, even when distinct, is traced out pale and faint, as distant objects on the horizon. And Faith, again, by which we get to know divine things, rests on the evidence of testimony, weak in proportion to the excellence of the blessing attested. And as Reason, with its great conclusions, is confessedly a higher instrument than Sense with its secure premisses, so Faith rises above Reason in its subject, more than it falls below it in the obscurity of its process.¹²⁰

Again, faith is not alone in the obscurity of its process of acquiring knowledge, because it, like other ways of gaining knowledge, commonly rests on highly personal and subjective factors that are too numerous, complex, and subtle to be translated into syllogistic arguments. As analogies to faith, Newman describes the original insights of a genius, the subtle instruments of discovery that are mathematical methods, indeed the metaphysical proofs of philosophers, which are difficult to embrace, even when presented to us by clear minded and sensible philosophers in which we fully confide, and, lastly, the exercise of sagacity in a great statesman or general. Says Newman,

And, in an analogous way, Faith is a process of the Reason, in which so much of the grounds of inference cannot be exhibited, so much lies in the character of the mind itself, in its general view of things, its estimate of the probable and the improbable, its impressions concerning God’s will, and its anticipations

derived from its own inbred wishes, that it will ever seem to the world irrational and despicable;—till, that is, the event confirms it. The act of mind, for instance, by which an unlearned person savingly believes the Gospel, on the word of his teacher, may be analogous to the exercise of sagacity in a great statesman or general, supernatural grace doing for the uncultivated person what genius for them.¹²¹

The important question still remains whether what is trusted—senses, memory, reasoning, and faith—is trustworthy? Why should we trust our senses? Our reason? Our memory? Why should we trust faith's reception of divine testimony as a revelation of the truths of the Gospel? Regarding our senses, our reason, and our memory, Newman points out, "We consider that there is so strong an antecedent probability that they are faithful, that we dispense with proof. We take the point for granted; or, if we have grounds for it, these either lie in our secret belief in the stability of nature, or in the preserving presence and uniformity of Divine Providence,—which, again, are points assumed."¹²² Clearly enough, Newman's claim about unprovable assumptions could itself land us in a vicious regress, or in a blind commitment. Newman's parity argument—all our belief-producing mechanisms are in the same epistemological state—is also not very reassuring. Admittedly, Newman does make a sound point, namely, that critics of religious belief tend to work with an epistemic double standard. In addition, his pragmatic justification for perception, memory, reason, and testimony is dubious—if we do not adopt them we would forfeit the rich supply of knowledge brought by perception, memory, reason, and testimony. But the whole question is whether these rational faculties provide knowledge, and if so how.

Newman holds that our cognitive faculties have an intrinsic affinity for truth, the apprehension of objective truth being their purpose—they can attain truth, keep it, recognize it, and preserve the recognition. All of this makes sense if those epistemic practices are underwritten by a metaphysical framework—belief in God would give us a reason for trusting our rational faculties. As Roger Trigg puts it, "If there is a God, it follows that we are likely to be able to trust the mechanisms for producing beliefs with which we have been designed. If there is a God, it is reasonable to assume that apparent presentations of divine reality in human experience are reliable. How, though, can any of this be established?"¹²³ On Newman's position, how one establishes such a theistic metaphysics remains unaddressed.

4. CONCLUSION: RELATIVISM OR REALISM?

With his denial of the role of explicit reason for discriminating between true and false beliefs, and with his emphasis on the priority of divine faith, is Newman in danger of retreating from claims to objective truth? With Newman's emphasis on the subjective and the personal, and with his concession that my faith is my faith, and that he cannot give grounds that may convince others, does his position quickly corrode all claims to truth? Is truth and justification so particularized that Newman cannot give a coherent account of the universal and transcendent value of revealed truth? In his own words, "In religious inquiry each of us can speak only for himself, and for himself he has a right to speak. His own experiences are enough for himself, but he cannot speak for others; he cannot lay down the law; he can only bring his own experiences to the common stock of psychological facts."¹²⁴ As if sensing that he has opened the door to subjectivism, or individual relativism, according to which what is true for some would not be true for others, Newman right away shuts the door by not focusing on who believes, but rather on whether what is believed is true. "He knows what has satisfied and satisfies himself; if it satisfies him, it is likely to satisfy others; if, as he believes and is sure, it is true, it will approve itself to others also, for there is but one truth."¹²⁵ This suggests that Newman upholds the objective nature of truth with its universal claim on everyone to believe it.¹²⁶ In other words, Newman is a realist about truth. Such realism affirms that a proposition is true if and only if what the proposition asserts is in fact the case about objective reality; otherwise, the proposition is false.

To prevent any misreading of his train of thought, Newman himself asks, "Shall we say that there is no such thing as truth and error?" No, says Newman, explicitly rejecting individual relativism, according to which "there is no such thing as a true religion or a false; that is true to each, which each sincerely believes to be true; and what is true to one, is not true to his neighbor."¹²⁷ The fact that "men differ so widely from each other in religious and moral perceptions" does not prove, he urges, "that there is no objective truth."¹²⁸ "[Epistemic] duties change, but truths never."¹²⁹ Put differently, the conditions of justification must be distinguished from the conditions of truth. Still differently, Newman doesn't confuse the conditions under which

something is true with the conditions under which I know that something is true. "But, though truth is ever one and the same, and the assent of certitude is immutable," adds Newman, "still the reasonings which carry us on to truth and certitude are many and distinct, and vary with the inquirer."¹³⁰ All those personal and subjective elements that enter all reasoning concerning matters of fact are subordinated to the truth of the proposition to which one assents. "Assent is the acceptance of truth," says Newman, "and truth is the proper object of the intellect." That is, it is assent "to the truth of things, and to the mind's certitude of that truth."¹³¹ For Newman, the human mind has an intrinsic affinity for truth, and thus he confidently anchors his assent to some proposition in objective truth. "Now truth cannot change; what is once truth is always truth; and the human mind is made for truth, and so rests in truth, as it cannot rest in falsehood. . . . It is of great importance then to show. . . . that the intellect, which is made for truth, can attain truth, and having attained it, can keep it, can recognize it, and preserve the recognition."¹³²

But realist metaphysics, such as these claims of Newman presuppose, have little impact unless it gives us grounding for reason. Newman's mere trusting reliance on belief-producing epistemic practices is insufficient. The final test of Christian faith is, as Roger Trigg rightly notes, "whether it is rooted in objective reality." Its claims to truth, Trigg adds, "have to be tested against the character of the real world. That is so because since there is one world, and everyone is confronted by it, claims to truth must have a universal significance."¹³³ In short, Christian beliefs are ontologically true because they correspond to reality. It follows then that grounding reason's access to truth needs some form, not only of epistemic realism because justified true beliefs mediate objective states of affairs, but also a realist view of truth. On a realist view of truth, a proposition is true if and only if what that proposition asserts is in fact the case about objective reality; otherwise, the proposition is false. Furthermore, what is required is a theistic realism about truth. According to the then Joseph Ratzinger, theistic realism holds that there exists an indissoluble relation among reality, truth, and knowledge, not in the human mind, of course, but rather in God's divine mind, with his knowledge being alone the foundation of how things really are. Ratzinger provides a theological-metaphysical grounding to this relation by going back to an infinite intellect, the divine mind. What is required, then, is a philosophical account of the intimate relationship between Christian faith and meta-

physics. But giving this account will have to wait for another time.¹³⁴ ✠

ABSTRACT: This article examines the thought of English philosopher and theologian John Henry Newman (1801–1890) on faith and rationality. In particular, Newman's own critique of evidentialism throughout his writings on epistemology is examined so as to see how he meets the difficulties associated with the question regarding the rationality of the ordinary Christian believer. This article is organized as follows. In section 1, Newman's critical response to evidentialism as well as his alternative account of rationality is presented. In section 2, I present an analysis of Newman's notion of rationality, which he variously calls "implicit reason," "informal inference," and "illative sense," on the one hand, distinguishing it from argumentative reason, or "explicit reason," on the other. In section 3, I consider Newman's parity argument that religious belief is in a similar epistemic state as any other beliefs formed by the senses, memory, and reasoning on the other. I conclude with some critical comments on the problem of relativism and the need for realist metaphysics to provide some scaffolding for Newman's epistemology.

ENDNOTES

- 1 Pope John Paul II, "Letter on the Occasion of the 2nd Centenary of the Birth of John Henry Cardinal Newman," *L'Osservatore Romano* (22 January 2001), available at <http://www.ewtn.com/library/papaldoc/jp2newm.htm>.
- 2 John Henry Newman, *Fifteen Sermons Preached Before the University of Oxford Between 1826 and 1843* (London: Longmans, Green, and Co., 1906), Sermon X, "Faith and Reason, Contrasted as Habits of Mind"; Sermon XI, "The Nature of Faith in Relation to Reason"; Sermon XII, "Love the Safeguard of Faith against Superstition"; and Sermon XIII, "Implicit and Explicit Reason," 176–221, 251–77, 222–50, respectively. In addition to these sermons, I will also use his "Religious Faith Rational," Sermon XV, *Parochial and Plain Sermons* 1:190–202; Discourse X, "Faith and Private Judgment"; and Discourse XI, "Faith and Doubt," in *Discourses Addressed to Mixed Congregations*, 192–237. I will also draw on Newman's mature philosophical work on religious epistemology, *An Essay in Aid of A Grammar of Assent*, introduction by Nicholas Lash (Notre Dame, IN: University of Notre Dame Press, 1979; originally published 1870). Additionally, I draw on John H. Newman, *The Philosophical Notebooks*, ed. at the Birmingham Oratory, rev. A. J. Boekraad, vol. 2, *The Text* (Louvain: Nauwelaerts Publishing House, 1970). *The Theological Papers of John Henry Newman on Faith and Certainty*, ed. J. Derek Holmes (Oxford: Clarendon Press, 1976). "Cardinal Newman's Theses *de Fide* and his Proposed Introduction to the French Translation of the University Sermons," ed. H. Tristram, *Gregorianum* 18 (1937): 219–60. See also, Carleton P. Jones, O.P., *Three Latin Papers of John Henry Newman, A Translation with Introduction and Commentary* (Rome: Pontificia Studiorum Universitas, 1995), 58–68.
- 3 Del Kiernan-Lewis, *Learning to Philosophize* (Belmont, CA: Wadsworth Publishing Co., 2000) 68–71, and at 69. See also Paul Helm, *Belief Policies* (Cambridge: Cambridge University Press, 1994).

- 4 Chief among these objectors is W. K. Clifford, "The Ethics of Belief," in *Lectures and Essays* (London: Macmillan, 1879), 345f.
- 5 *The Theological Papers of John Henry Newman*, "The Evidences of Religion," 85.
- 6 William P. Alston, *Perceiving God: The Epistemology of Religious Experience* (Ithaca, NY: Cornell University Press, 1991), 71.
- 7 *The Theological Papers of John Henry Newman*, "The Evidences of Religion," 84.
- 8 Newman, *Oxford Sermons* XII, 232–33; italics added.
- 9 A helpful sketch of this threefold response is given by Kelly Clark, *Return to Reason: A Critique of Enlightenment Evidentialism and Defense of Reason and Belief in God* (Grand Rapids, MI: Eerdmans, 1990), 3–9.
- 10 Daniel J. Hill & Randall D. Rauser, *Christian Philosophy A-Z* (Edinburgh: Edinburgh University Press, 2006), 63. See also the entry, "Fideism": "The tendency (a) to undervalue the role of reason in examining religious claims and (b) to overemphasize the free decision of faith. At best fideism rightly challenges attempts to demonstrate scientifically the truth of Christianity. At worst it represents faith as a blind leap in the dark" (G. O'Collins, S.J., E. G. Farrugia, S.J., *A Concise Dictionary of Theology* [New York/Mahwah, NJ: Paulist Press, 1991], 78).
- 11 St. Thomas Aquinas, *Summa contra gentiles*, bk. 1, 7.1.
- 12 Newman, *The Philosophical Notebook*, entry "Beyond Reason," 100–07, and at 101, 103.
- 13 Alvin Plantinga, *Warranted Christian Belief* (New York: Oxford University Press, 2000). Nicholas Wolterstorff, *John Locke and the Ethics of Belief* (Cambridge: Cambridge University Press, 1996). William P. Alston, *Perceiving God: The Epistemology of Religious Experience* (Ithaca, NY: Cornell University Press, 1991). Michael Polanyi, *Personal Knowledge, Towards a Post-Critical Philosophy* (New York: Harper Torchbooks, 1958).
- 14 Stanley Jaki, O.S.B., "Newman's Assent to Reality, Natural and Supernatural," in *Newman Today*, ed. Stanley L. Jaki (San Francisco: Ignatius Press, 1989) 189–220, and for this quote at 192–93.
- 15 St. Thomas Aquinas, *Summa theologiae* I, q. 2, a. 2.
- 16 *The Theological Papers of John Henry Newman*, "On the Popular, Practical, Personal Evidence for the Truth of Revelation," and "The Evidences of Religion," in Chapter V, "Papers of 1860 on the Evidence for Revelation," 81, 84–85, respectively. Occasionally, the editor of Newman's papers uses angular quotation marks.
- 17 These are the three reasons Aquinas gives why "[i]t is necessary for man to accept by faith not only those things which are above reason, but also those which can be known by reason." That is, "in order that men might have knowledge of God, free of doubt and uncertainty, it was necessary for Divine matters to be delivered to them by way of faith, being told to them, as it were, by God Himself Who cannot lie" (*Summa theologiae* II-II, q. 2, a. 4).
- 18 Aquinas, *Summa contra gentiles*, bk. 1, 4.6.
- 19 *The Theological Papers of John Henry Newman*, "On the Popular, Practical, Personal Evidence for the Truth of Revelation," 81.
- 20 *The Theological Papers of John Henry Newman*, "Papers of 1860 on the Evidence for Revelation," 81.
- 21 Newman, *Grammar of Assent*, 385–86.
- 22 *The Theological Papers of John Henry Newman*, "Papers of 1860 on the Evidence for Revelation," 81. In his *Theses de Fide*, Newman states in the Postscript that "The motives [of credibility], obviously, are not the same for everyone" ("Theses on Faith," 67). Elsewhere in his *Theses de Fide* Newman states, "Granted that the motive [of credibility] that would affect a child might not be sufficient to satisfy everyone, it is still sufficient to prove evidently that it would be prudent for the child to believe. Obviously, a simply child is prudent to believe what he hears from his parents" (63).
- 23 I am following here Kiernan-Lewis, *Learning to Philosophize*, 72–77.
- 24 *The Theological Papers of John Henry Newman*, "Papers of 1860 on the Evidence for Revelation," 81.
- 25 Newman, Sermon X: 42. (8), 197.
- 26 Newman, Sermon XIII: 17. (1), 164.
- 27 Newman, Sermon X: 42. (8), 43, 197–98; italics added.
- 28 John Cottingham, *The Spiritual Dimension, Religion, Philosophy and Human Value* (Cambridge: Cambridge University Press, 2005), 139. See also, Joseph Ratzinger/Benedict XVI, *The Yes of Jesus Christ*, trans. Robert Nowell (New York: Cross Publishing Company, 1991), 17–19: "All too often people are inclined, the great theologian states, to wait quietly as if proofs of the reality of revelation would walk in through their front door, as if they were in the position of judges rather than suppliants. "Like this is the conduct of those who resolve to treat the Almighty with dispassionateness, a judicial temper, clear-headedness and candor. But we deceive ourselves by making ourselves the lord of truth in this way. It [truth] withdraws itself from those who claim self-sufficiency and reveals itself only to those who approach it in attitude of reverence, of adoring humility [. . .] To a 'critical' way of thinking that criticizes everything except human beings themselves we thus oppose openness to the infinite, vigilance, and sensitivity for the whole of being: a humility of thought that is ready to bow before the majesty of truth, before which we are not judges but suppliants—it reveals itself only to the watchful and humble heart."
- 29 Cottingham, *Spiritual Dimension*, 139.
- 30 Cottingham, *Spiritual Dimension*, 139.
- 31 *The Theological Papers of John Henry Newman*, "The Evidences of Religion," 82–83.
- 32 *The Theological Papers of John Henry Newman*, "Papers of 1860 on the Evidence for Revelation," 81.
- 33 Newman, Sermon X: 26, 187; 38. (4), 193; Sermon XI: 1, 203; Sermon XII: 7, 8, 9, 226–28.
- 34 Newman, Sermon X: 44, 199.
- 35 *The Theological Papers of John Henry Newman*, "Revelation in its Relation to Faith," 140–57, and at 155–56.
- 36 Newman, Sermon X: 26, 187.
- 37 Newman, Sermon X: 17, 185.
- 38 Aidan Nichols, O.P., *Epiphany: A Theological Introduction to Catholicism* (Collegeville, MN: The Liturgical Press, 1996), 10.
- 39 Newman, Sermon XII: 11, 230.
- 40 Nichols, *Epiphany*, 10.
- 41 John Henry Newman, *Apologia Pro Vita Sua* (London: J.M. Dent & Sons Ltd., 1864), 219.
- 42 Newman, *Apologia*, 219. See also, *The Theological Papers of John Henry Newman*, "Revelation in its Relation to Faith," 143.
- 43 Newman, *Apologia*, 220.
- 44 Nichols, *Epiphany*, 10.
- 45 *The Theological Papers of John Henry Newman*, "Revelation in its Relation to Faith," 154.
- 46 Alston, *Perceiving God*, 6.
- 47 Newman, Sermon XI: 6, 8–9, 206–07.
- 48 Newman, Sermon XI: 16, 212.
- 49 Newman, Sermon X: 5–8, 179–180.
- 50 On this, see Stanley L. Jaki, O.S.B., *Newman's Challenge* (Grand Rapids, MI: Eerdmans Publishing Co., 2000) 201.
- 51 Newman, Sermon X: 16, 184.
- 52 John Henry Newman, Sermon XV, "Religious Faith Rational," in *Parochial and Plain Sermons*, vol. 1, 1843, 190–202, and at 194.
- 53 Aquinas states, "Other things being equal, sight is more certain than hearing; but if (the authority) of the persons from whom we hear greatly surpasses that of the seer's sight, hearing is more certain than sight. . . and much more is a man certain about what he hears from God who cannot be deceived, than about what he sees with his own reason which can be mistaken" (*Summa theologiae* II-II, q. 4, a. 8, ad 2).
- 54 John Paul II, *Fides et Ratio*, 31, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_15101998_fides-et-ratio_en.html.
- 55 Newman, "Religious Faith Rational," 195.
- 56 Newman, "Religious Faith Rational," 195.
- 57 Kevin Vanhoozer, "Hermeneutics of I-Witness Testimony," in *First Theology: God, Scriptures and Hermeneutics* (Downers Grove, IL: InterVarsity Press; Leicester: Apollos, 2002), 257–74, at 269.
- 58 J. L. A. Garcia, "Moral Reasoning & the Catholic Church," *New Oxford Review* (June 1992): 13–17, and at 14.
- 59 Garcia, "Moral Reasoning & the Catholic Church," 14. "Assertoric authority. . . flows from being in a position to know" (16).
- 60 Newman, "Religious Faith Rational," 196.
- 61 As Vatican I was to put it in 1869 in its Dogmatic Constitution *Dei Filius*: "We believe [by faith] that what he has revealed is true, not because the intrinsic truth of things is recognized by the natural light of reason, but because of the authority of God himself who reveals them, who can neither err nor deceive" (Heinrich Denzinger, *Compendium of Creeds, Definitions, and Declarations on Matter of Faith and Morals*, ed. Peter Hünermann, 43rd ed., trans. and ed. Robert Fastiggi and Anne Englund Nash [San Francisco: Ignatius Press, 2012], 3008).
- 62 John Paul II, *Catechesis on the Creed*, vol. 1, *God Father and Creator* (Boston: Pauline Books & Media, 1996), 31. For a gem of a philosophical tract by a Catholic philosopher on an epistemology of testimony, see Josef Pieper, *Belief and Faith*, trans. Richard and Clara Winston (New York: Pantheon Books, 1963). See also, Josef Pieper, *Tradition, Concept and Claim*, trans. E. Christian Kopff (South Bend, IN: St. Augustine's Press, 2010).
- 63 Jean Mouroux, *I Believe: The Personal Structure of Faith*, trans. Michael Turner (New York: Sheed and Ward, 1959), 57.
- 64 B. B. Warfield, "On Faith in its Psychological Aspects," in *Studies in Theology* (New York: Oxford University Press, 1932), 357–66, at 392. This, too, is the view of C. S. Lewis in "On Obstinacy in Belief," *The World's Last Night and Other Essays* (New York: Harvest/HBJ Book, 1952), 13–30.
- 65 John Paul II, *Fides et Ratio*, 13.
- 66 John Paul II, *Catechesis on The Creed* 1:44. Warfield and John Paul II hold remarkably similar positions on this matter of testimony. See Warfield's essay, "On Faith in its Psychological Aspects," especially, 392–403.
- 67 Helpful here regarding Aquinas' view on faith is F. J. Crosson, "W. C. Smith on Aquinas," in the *Journal of Religion* 65, no. 3 (July 1985): 399–412.
- 68 John Paul II, *Catechesis on the Creed* 1:31.
- 69 Aquinas, *Summa Theologiae* II-II, q. 11, a. 1.
- 70 Aquinas, *Summa Theologiae* II-II, q. 129, a. 6.
- 71 John Paul II, *Fides et Ratio*, 13; italics added.
- 72 John Paul II, *Fides et Ratio*, 13.
- 73 John Henry Newman, "Love the safeguard of Faith against Superstition," Sermon XII in *Oxford University Sermons*, Preached on Whit Sunday, May 21, 1839, available at <http://www.newmanreader.org/works/oxford/sermon12.html>.
- 74 Newman, "Religious Faith Rational," 197.
- 75 Newman, "Religious Faith Rational," 199–200.
- 76 Bavinck, *Gereformeerde Dogmatiek*, I (Kampen: J.H. Kok, 1895), 551. Ed. John Bolt, trans. John Vriend as *Reformed Dogmatics, Prolegomena*, vol. 1 (Grand Rapids, MI: Baker Academic, 2003), 582. Elsewhere Bavinck writes: "To the question 'Why do you believe Scripture?' the only answer is: 'Because it is the word of God'. But if the next question is 'Why do you believe that Holy Scripture is the word of God?' a Christian cannot answer. That Christian will admittedly appeal to the marks and criteria of Scripture, to the majesty of its style, the sublimity of its content, the depth of its ideas, the abundant fruit it has borne, etc. But these are not the grounds of his or her faith; they are merely the attributes and characteristics that the believing mind later discovers in Scripture, just as the proofs for God's existence do not precede and undergird faith but flow from it and are constructed by it. All the proofs for belief in Scripture derived from its marks and criteria show with utter clarity that no deeper ground can be indicated. 'God said it' (*Deus dixit*) is the foundational principle (*primum principium*) to which all dogmas, including the dogma of Scripture can be traced" (*Gereformeerde Dogmatiek* I, 559 [ET: 588–90]).
- 77 Nicholas Wolterstorff, "Herman Bavinck—Proto Reformed Epistemologist," in *Calvin Theological Journal* 45, no. 1 (April 2010): 133–46.
- 78 Bavinck, *Gereformeerde Dogmatiek* I, 568 [ET: 597].
- 79 Wolterstorff, "Herman Bavinck," 140.
- 80 Newman, Discourse X: 194–95. Newman elsewhere explains: "The merit of faith consists in the fact that it is an act of free choice assisted by grace, not the acceptance [reception] of conclusions which the intellect, compelled by logical necessity, could not reject. Faith is the gift of God and not a mere act of our own, which are free to exert when we will. It is quite distinct from an exercise of reason, though it follows upon it [. . .]. The absolute and perfect certitude of divine faith does not rest on reasoning or human motives, but solely on the fact that God, the Eternal truth, who cannot deceive nor be deceived, has spoken" (Newman, "Theses de Fide," 64–65, 66).
- 81 Newman, Sermon X: 13, 182–83.
- 82 By moral feelings, Newman has the following in mind. "[L]ove of the great Object of Faith, watchful attention to Him, readiness to believe Him near, easiness to believe Him interposing in human affairs, fear of the risk of slighting or missing what may really come from Him; these are feelings not natural to fallen man, and they come only of supernatural grace; and these are the feelings which make us think evidence sufficient, which falls short of a proof in itself. The natural man has no heart for the promises of the Gospel, and dissects its evidence without reverence, without hope, without suspense, without misgivings; and, while he analyzes it perhaps more philosophically than another, and treats it more luminously, and sums up its results with the precision and propriety of a legal tribunal, he rests in it as an end, and neither attains the further truths at which its points, nor inhales the spirit which it breathes" (Sermon X). See also Sermon X: 40. (6), 195.
- 83 Newman, Sermon X: 44, 200.
- 84 Brian Davies, O.P., "Why Should We Believe It?" *New Blackfriars* 69, no. 819 (1988): 360–68, and at 367. Also helpful is Michael Dummett, "Theology and Reason," *New Blackfriars* 69, no. 816 (1988): 237–45.
- 85 Newman, Sermon X: 27, 188. In Sermon XI, Newman writes: "[As things are, amid the engagements, the confusion, and the hurry of the world, and, considering the private circumstances of most minds, few men are in a condition to weigh things in an accurate balance, and to decide, after calm and complete investigations of the evidence. Most men must and do decide by the principles of thought and conduct which are habitual to them; that is, the antecedent judgment with which a man approaches the subject of religion, not only acts as a bearing this way or that,—causing him to go out to meet the evidence in a greater or less degree, and no more,—but it practically colours the evidence, even in a case in which he has recourse to evidence, and interprets it for him."
- 86 Newman, *Grammar of Assent*, 90–91.
- 87 Newman, *Grammar of Assent*, 148–49.
- 88 Newman, *Grammar of Assent*, 136.
- 89 Roger Trigg, *Rationality and Religion: Does Faith Need Reason?* (Oxford: Blackwell, 1998), 115. I have profited immensely from Trigg's work, especially chapters 6 and 9, "Is a Religious Epistemology Possible?" and "Does Faith Need Reason?" 113–33 and 175–95, respectively.
- 90 John Locke, *An Essay Concerning Human Understanding*, bk. 4, chap. 19, no. 1.
- 91 Newman, *Grammar of Assent*, 139.
- 92 Newman, *Grammar of Assent*, 139.
- 93 Locke, *An Essay Concerning Human Understanding*, bk. 4, chap. 15, no. 2.
- 94 Locke, *An Essay Concerning Human Understanding*, bk. 4, chap. 16, no. 6.
- 95 Newman, *Grammar of Assent*, 139.
- 96 John Hick, *Faith and Knowledge*, 2nd ed. (Glasgow: Fontana Books, 1974);

originally published 1957), 69–91. I have profited from Hick's straightforward introduction to Newman.

97 Newman, *Grammar of Assent*, 230.

98 Newman, *Grammar of Assent*, 240.

99 Newman, Sermon XIII: 9, 258–59.

100 Newman, *Grammar of Assent*, 82. For more on this, see Aidan Nichols, O.P., *A Grammar of Consent* (Notre Dame, IN: University of Notre Dame Press, 1991), chapter 1, “John Henry Newman and the Illative Sense,” 19–38.

101 Newman, Sermon XI: 16, 212. Newman does not deny that faith is a *cognitive* activity. Faith is a matter of believing that certain propositions are true. Newman exposes the false dilemma behind the denial of the claim that faith is propositional in a crucial paragraph of *Grammar of Assent* (108–09): “Here we have the solution of the common mistake of supposing that there is a contrariety and antagonism between a dogmatic creed and vital religion. People urge that salvation consists, not in believing the propositions that there is a God, that there is a Saviour, that our Lord is God, that there is a Trinity, but in believing in God, in a Saviour, in a Sanctifier; and they object that such propositions are but a formal and human medium destroying all true reception of the Gospel, and making religion a matter of words or of logic, instead of its having its seat in the heart. They are right so far as this, that men can and sometimes do rest in the propositions themselves as expressing intellectual notions; they are wrong, when they maintain that men need do so or always do so. The propositions may and must be used, and can easily be used, as the expression of facts, not notions, and they are necessary to the mind in the same way that language is ever necessary for denoting facts, both for ourselves as individuals, and for our intercourse with others. Again, they are useful in their dogmatic aspect as ascertaining and making clear for us the truths on which the religious imagination has to rest. Knowledge must ever precede the exercise of the affections.” Of course, faith is more than cognitive, because at its core, it also involves trust in God. Says Newman, “Now, in the first place, what is faith? It is assenting to a doctrine as true, which we do not see, which we cannot prove, because God says it is true, who cannot lie [. . .] [H]e who believes that God is true, and that this is His word, which He has committed to man, has no doubt at all. He is as certain that the doctrine taught is true, as that God is true; and he is certain, because God is true, because God has spoken, not because he sees its truth or can prove its truth” (Discourse X: 194–95).

102 Newman, Sermon XIII: 4, 255.

103 Newman, Sermon XIV: 5, 280.

104 Newman, Sermon XIII: 15, 262.

105 Newman, Sermon IV: 13, 66.

106 Newman, Sermon XI: 14, 210.

107 Newman, *Grammar of Assent*, 321.

108 Newman, Sermon XII: 13, 232.

109 Newman, *Grammar of Assent*, 318–19.

110 Newman, *Grammar of Assent*, 319.

111 Newman, *Grammar of Assent*, 320.

112 Newman, *Grammar of Assent*, 321.

113 Newman, *Grammar of Assent*, 293.

114 Newman, Sermon XII: 21, 236.

115 Newman, Sermon XII: 22–25, 236–38.

116 Newman, Sermon XI: 22, 214.

117 Newman, Sermon XI: 18. (2), 213. In the same vein, Newman writes: “Whether we consider processes of Faith or other exercise of Reason, men advance forward on grounds which they do not, or cannot produce, or if they could, yet could not prove to be true, on latent or antecedent grounds which they take for granted” (Sermon XI, “The Nature of Faith in Relation to Reason,” 17, 212).

118 Newman, *Parochial and Plain Sermons*, Sermon XV: 193.

119 Newman, “Religious Faith Rational,” 194, 199.

120 Newman, Sermon XI: 23 (3), 215–16. In the third edition of the *Oxford Sermons*, Newman adds this clarification: “Here, by ‘absolute certainty in nothing’, is meant, as I believe, ‘proofs such absolutely to make doubt impossible’; and by ‘between doubt and inactivity’, is meant, not formal doubt, but a state of mind which recognizes the possibility of doubting” (Sermon XI, “The Nature of Faith in Relation to Reason,” 23. (3), 215).

121 Newman, Sermon XI: 25, 218.

122 Newman, Sermon XI: 19, 213.

123 Trigg, *Rationality and Religion*, 131.

124 Newman, *Grammar of Assent*, 300.

125 Newman, *Grammar of Assent*, 300, italics added.

126 Yet, Jaki is right (*Newman's Challenge*): “[Newman's] forceful statements in the *Grammar* about objective truth, though, if I may say so . . . amount in each case to a sort of rescue operations. Time and again, when he seems to commit himself to mere empirical facts, he reasserts, and in a matter of fact way, the validity of objective truths transcending those facts. The most telling of such cases occur when he insists on the personal conditions that decide whether a proposition is assented to or not. But he immediately balances his act by asking, as if to prevent any misreading of his train of thought: ‘Shall we say that there is no such thing as truth and error’?”

127 John Henry Newman, *Discourses Addressed to Mixed Congregations* (London: Longmans, Green, and Co., 1906; originally published 1849), Discourse VIII, “Nature and Grace,” 145–68, and for this quote at 147.

128 Newman, *Grammar of Assent*, 292.

129 Newman, *Grammar of Assent*, 278.

130 Newman, *Grammar of Assent*, 278.

131 Newman, *Grammar of Assent*, 271.

132 Newman, *Grammar of Assent*, 181.

133 Trigg, *Rationality and Religion*, 123.

134 On epistemic realism and a realist view of truth, see John Paul II, *Fides et Ratio*, 82. For theistic realism, see Joseph Ratzinger (Benedict XVI), *Einführung in das Christentum* (Munich: Kösel-Verlag, 2000), 59. Translated as *Introduction to Christianity* by J. R. Foster, with a new preface, trans. Michael J. Miller (San Francisco: Ignatius Press, 2004), 53. I address the question of Christian faith and metaphysics in Eduardo J. Echeverria, “Revelation and Foundationalism: Towards a Historically Conscious Foundationalism,” in *Josephinum Journal of Theology* 19, no. 2 (2012): 1–39.

Thomas More's Trial by Jury: A Procedural and Legal Review with a Collection of Documents

Henry Ansgar Kelly, Louis W. Karlin, and Gerard B. Wegemer, Editors.
Rochester, New York: The Boydell Press, 2011.

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Until recently, the editors of this volume remind us, the common view of Thomas More was of a “cheerful humanist” (xi)¹ whose brilliant career as author, lawyer, judge, and royal advisor came to a tragic end when he was executed by a king whose tyrannical ambitions would not brook More's conscientious refusal to endorse his usurping policies. As the book's title reminds us, however, More's decapitation was preceded by a jury trial, one of the chief and most venerable assurances in the common law tradition that criminal prosecutions will be conducted fairly. Could it be, as a “comparatively recent . . . consensus” among scholars suggests, that More's trial was not “a typical political miscarriage of justice,” but rather “a carefully prepared and executed judicial process”? The primary purpose of this book is “to open the case for a reassessment” of this consensus, and to offer “reasons to disagree” with it (xv). To that end, the volume's ten contributing scholars examine all available evidence of the details of More's trial on the basis of their expertise in law, literature, and political philosophy. The book also contains numerous primary source documents, including the sparse government records of the proceedings as well as fuller accounts by More and other contemporaries. Together the materials assembled in this book help us “to review the known facts and reports about [More's] prosecution, and to [assess] new ‘positions’ and conclusions” regarding its (il)legitimacy (xiv).

Though some of the issues addressed in this book might seem to be of interest mainly to specialists in the field of legal history, its frequent references to the background and repercussions of the trial help us to see the larger significance of the clash between Henry VIII and his saintly councilor. With a reputation for genius, a spirit of reform, and personal and professional integrity, More served the realm between 1504 and 1532 as mem-

ber of Parliament, undersheriff of London, diplomat, speaker of the House of Commons, privy councilor to Henry, and Chancellor of England. When Henry sought an annulment of his marriage to Catherine of Aragon, however, on the pretext that the papal dispensation by which he had married his brother's widow was invalid, More studied the matter on his behalf but frustrated Henry by finding no grounds to support his case. With the assistance of Thomas Cromwell—an alleged reader of Niccolò Machiavelli²—Henry eventually decided to solve his problem by asserting supreme royal control over the local Church, effectually severing English Christianity from the Church Universal. As his cautionary advice to Henry and vigorous engagement in refuting the teachings of early Protestant authors attest, More found the rejection of Church authority and doctrine to be wholly incompatible with a legitimate approach to political and religious reform (xiv).

When, under coercion, the bishops of England recognized Henry as Supreme Head of the Church in England, More resigned his chancellorship. Soon after, Parliament—under strong pressure from the king—prescribed an oath which, among other things, affirmed that Henry's marriage to Catherine had been invalid. More refused the oath and was sentenced by attainder (by statute and without a trial) to life in prison. While in prison, More was interrogated regarding his opinion of the acts of Parliament, passed after More's imprisonment, proclaiming Henry's headship of the Church and “declaring it treason to oppose any royal title by word or deed.” More's response was to insist that he would not meddle further in political affairs by giving an opinion for or against the king's title, and that he wished to devote the remainder of his life to prayer and study. After several such interrogations, More was charged with malicious silence concerning the king's supremacy, with encouraging his fellow inmate Bishop John Fisher to deny the king's title, and with declaring to Richard Rich—Solicitor General under Cromwell—that Parliament had no authority to make a man head

of the Church. In his defense, More protested that his silence was neither malicious nor prohibited by law, that he had given Bishop Fisher no specific advice on how to respond to questions about the supremacy, and that to Rich he had only denied that Parliament could make a man “pope.”

In what by all accounts was a swift verdict, the jury—whose members had been carefully selected by a panel of More’s enemies and Henry’s allies, and who had recently heard a letter from the king himself proclaiming from the pulpit that More was a traitor—found More guilty as charged. After the verdict, More revealed the grounds of his opposition to Henry’s policies, arguing that the Act of Supremacy was in violation of reason, divine law, the Magna Carta, and the king’s coronation oath, and that his conviction was therefore void. Nervously deflecting this challenge to the law’s validity, the judges proceeded to sentence More to death (xiv–xvii).

In their attempt to assess the justice of More’s trial without falling into the snare of anachronistic judgments (54, 84), the authors of this volume reveal innumerable features of the proceedings which, whatever their status in Tudor times, would clearly invalidate More’s conviction by standards of contemporary common or constitutional law.³ One is left with a profound sense of gratitude that the framers of the U.S. Constitution (and the sources from which they drew) went to such lengths to shield individuals from the treatment to which we see Thomas More subjected here. On the other hand, attention to the particulars of More’s trial—and especially his appeals to the rights of conscience rooted in a higher law—reminds us of the long history behind recent erosions of religious liberty in the United States and elsewhere.⁴ As Hilaire Belloc notes, Henry’s establishment of royal supremacy over the Church was a direct antecedent to the notion of the divine right of kings, which in turn laid the foundations for the doctrine (alive today, if not in full vigor) of the modern nation-state, whose sovereignty is commonly thought to render it unqualifiedly supreme within its territory.⁵ By 1648, “all the major European powers” had come to embrace “the principle of royal supremacy over both church and state”;⁶ and in 1689, John Locke’s seminal defense of religious toleration, while denying the state power over spiritual matters as such, made it clear that “no opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated by the magistrate.”⁷ Even in a nation such as the United States founded

on the doctrine of religious liberty, persons or groups attempting to live in accordance with traditional understandings of divine or natural law increasingly find themselves at odds with public policies demanding their acquiescence in, or active cooperation with, unconscionable teachings or practices; and in such cases their only legal recourse is to a government whose highest court has proclaimed its allegiance to a definition of liberty manifestly hostile to such traditional views.⁸

Today, as in More’s time, the principles and practicalities at stake in clashes of personal belief, religious authority, and political power remain complex. Though attention to More’s legal defense cannot furnish us with simple solutions in theory or policy, it can raise crucial questions not only about what legal procedures are necessary to guarantee justice to criminal defendants, but also about the proper boundaries and interrelations of natural, divine, and human law. Although it says more about some of these questions than others, *Thomas More’s Trial by Jury* provides both a valuable contribution to our understanding of an important legal conflict, and a salutary spur to reflect on what is best as well as what is most questionable in the foundations and development of modern political doctrine and practice.

In their “Preface,” the editors set the stage for the chapters to follow by outlining the main facts and issues surrounding More’s trial, the chief primary documents upon which reconstructions and evaluations of the trial must be based (included here in an appendix), and their reasons for challenging the aforementioned scholarly consensus. The editors attribute this consensus to the work of Professor J. Duncan M. Derrett, whose influential 1964 article “The Trial of Sir Thomas More” describes its proceedings so as to make them appear consistently impartial, whether or not one agrees with the substance of the laws under which More was convicted.⁹

The editors identify two main points on which they wish to challenge Derrett’s account. The first concerns his handling of an apparent contradiction between two major sources on the trial: an eyewitness report, “best preserved in a Guildhall manuscript,” depicts More as being convicted for “malicious silence” concerning the king’s title and on two counts of conspiracy with Fisher; while More’s son-in-law William Roper, writing two decades later on the basis of his recollection of contemporary reports, seems to describe More as convicted solely for his alleged statements to Richard Rich. Without noting these divergences, Derrett assumes that four charges were brought against

More but that he was convicted only on the fourth. Since it is “plain” (presumably on the basis of Roper’s account) that “three-quarters of the Crown’s carefully-prepared case” was abandoned, Derrett concludes that the trial judges must have dismissed the charges of malice and conspiracy in response to More’s arguments.¹⁰

The second point on which the editors challenge Derrett concerns the significance of More’s postconviction arguments against the Act of Supremacy. Roper explicitly claims that More presented “as many exceptions as he thought meet” “for the avoiding of the indictment,” and Derrett describes the court as seriously pondering the very real option of declaring the Act void on the basis of natural, divine, and constitutional law. Indeed, he goes so far as to describe the trial as “a genuine conflict between two constitutional theories.” Had More succeeded in persuading the judges, “entirely fresh advice would have been tendered to the king on the manner in which the Reformation should have been forwarded—itsself by no means an impossibility.” Though Derrett treats More’s reasons as weighty, he sees the court’s awkward silence and contrary ruling not as a guilty evasion of duty, but rather as reflecting a genuine conviction, rooted in “ancient...precedents,” that the “law of God, so far from being repugnant to the Act,...urgently required its passage.” Without explicitly endorsing this conviction, Derrett argues (counterfactually) that even More would have to agree that the application of God’s law to England must ultimately be decided by English authorities. In this sense, the trial established a precedent—one underlying “our present notion of parliamentary omnicompetence”—that Derrett views as binding on More and on us, regardless of our personal views.¹¹

On these and several other sensitive points, Derrett manages to maintain sympathy and respect for Thomas More while elevating our perception of the trial to one in which fair minded judges considered More’s defense with care, upholding what was valid and rejecting what was doubtful in the arguments and evidence he presented. In response, the editors allege that “there is nothing at all to suggest that the judges responded favorably to any of More’s arguments,” and hence no evidence in support of what Derrett calls “the *bona fides* of the trial.”¹² A better analysis of the various accounts, they think—including those of Henry’s cousin and political opponent Reginald Pole, and that of trial judge Sir John Spelman—supports the conclusion that “More was charged and convicted on the whole of the indictment,” including charges that Derrett apparently

believes were worthy of being dismissed. As for Roper’s claim that More sought to have the Act declared void, the editors contend that there is “no evidence that such a motion was ever used in criminal cases in the sixteenth century,” and so prefer the respective explanations of Pole and the Guildhall report to the effect that More, in speaking against the Act, sought merely to warn England of its errors or to exonerate his conscience (xvi–xvii). On this view, the conflict of constitutional theories all but disappears, and with it all the prestige associated with judges shouldering the burden of deciding the course of future centuries.

From another angle, this last position of the editors may appear to weaken More’s case and strengthen that of his judges, since it removes a major plank in his legal defense. As we shall see, however, the contributors to this volume tend to regard the appeal to higher law as tenuous at best, at least when it comes to the proper discretion of judges. In light of their doubts regarding the juridical efficacy of higher law, they regard as “more important” the question of “whether the judges treated More fairly and according to [positive] law in not accepting his contention that he did not fall under the Treasons Statute”—a view which shapes the chapters to follow. The book’s first chapter, a nearly exhaustive review of the trial’s legal procedure, concludes that “the judges could not have been reasonably expected to declare the act of Parliament illegal,” but “were at fault for not ruling in [More’s] favor” on the basis of statutory law (52). Its second chapter examines the “law of nature as it was then understood to relate to criminal procedure,” coming to the “unmistakable, if disappointing, conclusion” that “the judgment against More could not have been overturned on the basis of invocation of the law of nature as it then stood” (70). Subsequent chapters, while adding many valuable considerations into the mix, operate largely within the bounds of these arguments. Our focus will therefore be on the strengths and weaknesses of the key claims these two chapters make regarding the facts of More’s trial and their relation to a sound interpretation of the human and higher laws relevant to his case, followed by our own treatment of the natural law tradition and its implications for More’s trial and beyond.

The first chapter of the book, by coeditor and legal historian Henry Kelly, turns again to Derrett and provides examples of specific weaknesses in his methods and conclusions. Kelly’s procedure is “to set out and comment upon all aspects of the trial from the beginning to the end, raising whatever questions seem called

for” (3). In a particularly effective way, Kelly highlights evidence against the view that “the trial [was] a carefully conducted judicial process that holds up well under modern legal scrutiny” (1).

Kelly begins his analysis with an important event which took place prior to the trial’s commencement: “the king issued a circular letter on June 25th, 1535 ordering the treasons of Bishop John Fisher and Sir Thomas More to be set forth to the people” in churches (1). This maneuver was perfectly timed to influence the proceedings of More’s trial, which opened on June 26th, followed by his indictment on the 28th, his conviction on July 1st, and his execution on the 6th. Kelly goes on to note that the trial’s commissioners (councilors and justices in charge of initiating and conducting the trial) included friends and family of Anne Boleyn (whose royal status was cemented by the Acts More opposed) and of Henry VIII (3–4). Thomas Cromwell, Henry’s secretary and the chief prosecutor in the case, was on the commission, and his “remembrances” contain a note reminding himself “to declare the opinion of the judges [touching Master More], & what shall be the king’s pleasure,”¹³ strongly suggesting that the judges were selected and directed with a view to something other than impartial justice (5). The Crown’s chief (and perhaps only) witness against More, Richard Rich, was the King’s General Solicitor (17). In a later chapter, Karlin and Oakley note that among the jurors chosen by the commission was “John Parnell, who seems to have been ‘the fast-talking Lutheran and vintner to the Boleyns who had tried to have [More] impeached’” (82). Kelly notes that More had no opportunity to vet the jurors and expose their prejudices against him (6). In light of these considerations, Derrett’s bare assertion that the evident bias of the judges and jurors “does not suffice to cast doubts upon the *bona fides* of the trial” rings hollow. Far more convincing is the conclusion of Karlin and Oakley that, “given the Crown’s overt influence and the undeniable fact that the jurors would have known they had much to lose or gain depending on their verdict, it is hard to see it as other than a foregone conclusion” (83).

Kelly notes that the various accounts of More’s trial—by Spelman, Pole, the Guildhall report, and Roper—discuss different combinations of charges against him. Significantly, the text of the actual indictment (included in the book) covers all of these charges (175–76). This fact, Kelly claims, combined with the precise wording of the conflicting accounts and the dynamics of legal prosecution at the time, make it

“highly unlikely that any part of the indictment was left unprosecuted.” The argument is convincing, though in asserting that Roper’s statement that More was indicted “upon [Rich’s] only report” “is manifestly untrue” (8–9), Kelly seems to overlook the possibility that Roper means not that speaking to Rich was the only charge against More, but rather that Rich’s was the only testimony (the only “report”) supporting any charge against More.¹⁴ This reading would preserve Roper’s credibility without contradicting the evidence that the court was unwilling to dismiss even the weakest charges against More.

For an understanding of More’s legal defense, beginning with his pleading, Kelly turns to Roper, who captures the heart of More’s response to the charges:

He openly told them that he would upon that indictment have abidden in law, but that he thereby should have been driven to confess of himself the matter indeed, [which] was, the denial of the king’s supremacy, which, he protested, was untrue. Wherefore he thereto pleaded not guilty; and so reserved unto himself advantage to be taken of the body of the matter, after verdict, to a-void that indictment (11).

In Roper’s account, More first tells the court openly (and quite boldly) that he can prove the matter of the indictment—the crime of which he is accused—to be legally void. In order to make this argument in court, however, More would have to admit to having denied the king’s supremacy, which he had not, and so he instead pleads not guilty to the charges, reserving his more radical argument for after the verdict. Next, alluding to the language of the Act of Treasons, which forbids “maliciously” denying the king one of his titles, More adds “that if those only odious terms, ‘maliciously, traitorously, and diabolically’ were put out of the indictment, he saw therein nothing justly to charge him” (11, 138).

Thus More, who had not spoken a word against the king’s supremacy since the Act had prohibited it, but who adamantly refused to affirm the title, rested his defense on three claims: first, that (contrary to the statutes) it was not illegal to deny the king’s supremacy; second, that he had not denied it; and third, that if he had denied it, he had not done so “maliciously.” Of these three claims, the first depends on an appeal to higher law, and More himself treats it as an option of last resort; while the latter two, based on his reading of statutory and common law, are the focus of More’s own case in chief, and of Kelly’s critique of the trial.

More’s claim that he had not denied the king’s supremacy breaks down into two assertions: first, that his

silence on the title could not legally be taken as denial of it; and second, that his communications to Fisher and Rich had contained no rejection of (or counsel to reject) the title. Before addressing these defenses, Kelly begins by assessing the strength of More’s claim that, even if his silence or words to Fisher and Rich were taken as denials of royal supremacy, they did not proceed from malice and hence did not violate the Act. In a later chapter of the book, Sir Michael Tugendhat, a British High Court Judge, commenting on the legal meaning of “malice,” contends that in the context of More’s trial, as in general legal usage today, malice likely signified not ill-will, but rather the intention to do what the law forbids. On this view, if the jury believed that More’s silence did constitute a denial of the title, or that he had spoken against the title to Fisher or Rich, they might reasonably have found More’s actions intentional and therefore “malicious” in the relevant sense (111–16). Against this conclusion, Kelly examines various accounts indicating that Parliament, reluctant to pass the Act of Treasons, had insisted on including the word “maliciously” in the statute precisely so that “not every speaking against the supremacy [would] be treason, but only maliciously speaking” (11–13).¹⁵

The intention behind Parliament’s wording of the Act, as well as its reception by More and other defendants prosecuted under it, show that in this context malice was rightly understood as adding something to intention. More himself argued that a man could no more be guilty of violating the Act of Treasons for speaking without malice than a man could commit the crime of forcible entry by entering a property without force (205). During his trial More was at pains to show that his silence proceeded not from any malice toward the king, but rather from the necessity of following his own conscience (77), and he characterized any words he had spoken to Fisher and Rich as hypothetical. Since “no attempt was made to prove malice on [More’s] part”—likely due to very recent precedents indicating (contrary to legislative intent) that the term was “void”—Kelly concludes that “the judges were at fault for not ruling in [More’s] favor on this point.” Indeed, their refusal to read the law as “intended by Parliament” was “a clear violation of their duty to enforce the law, and a manifestation of malice on their part” (14, 16, 18, 31, 52).

After a brief discussion of the kinds of evidence brought against More, Kelly proceeds to examine More’s defense against the charge that his refusal to state what he thought of the king’s title amounted to a criminal denial thereof. More’s key statement on this

matter is that “neither your statute nor anything in the laws of the whole world can rightly [*jure*] afflict anyone with punishment, unless one has committed a crime in word or deed, since laws have constituted no penalty for silence.” When the prosecutor insisted that silence indicated opposition to the statute, More elaborated: “if it is true what universal law [*jus commune*] says, ‘One who keeps silent seems to consent,’ then that silence of mine gave approval to that statute of yours more than it weakened it.” As for the notion that a subject was bound to affirm the goodness of the king’s laws, More countered that “there is a much greater obligation on the part of a good man and faithful subject to consult his own conscience and eternal salvation and to follow the prescriptions of reason” (18–19). Here we encounter a great irony in More’s stance. That More’s conscience would not allow him to affirm the king’s supremacy clearly meant that he regarded such affirmation as contrary to divine and (as his words here imply) natural law. On the other hand, More’s conscience did not require him to speak against the title when doing so would mean his certain death (30), and it even permitted him to appeal to a legal canon that would direct the court to construe his silence as legal—though clearly not actual—consent.

In a fascinating section of his chapter, Kelly considers a complex range of meanings silence has in the *jus commune* or common law of Europe. It turns out that the rule More cites is one among many, according to which silence can mean agreement or disagreement depending on the context. Though Kelly does not address the question of which context and therefore which rule best fits More’s case, perhaps it is the rule pertaining “to one’s reaction to a yes-and-no question,” which states that “One who remains silent neither confesses nor denies” (22). If so, More ought to have been safe, though not on the precise grounds he cites.¹⁶

Kelly next confronts the crucial question of whether a defendant in a criminal trial was required by the standards of the time—long before the Fifth Amendment—to answer questions put by the court. “In the criminal procedure of both English common law and international canon law,” he finds, “the defendant is obliged to speak to the charges, that is, about a specific past crime, not about his thoughts” (24). By pleading not guilty and asserting that he never denied the king’s title, More seems to have said as much as the law could require him to say. Nonetheless, Kelly leaves open the possibility that More might have been obligated to speak by “a statute that commanded Henry VIII’s subjects to

acknowledge his ecclesiastical supremacy.” The decisive point for Kelly is that “this situation did not come up, precisely, since neither of the relevant statutes of November 1534 imposed such an obligation.” The Act of Supremacy declared Henry Head of the Church, and the Act of Treasons punished the malicious attempt to deprive the king of any of his titles; no statute required subjects to affirm his titles under penalty of law (25–26). Once again, More is exonerated for Kelly not so much because of higher laws limiting Parliament, but because his actions were not proved to violate its legislation.

Kelly also exonerates More with regard to his alleged statements to Fisher and Rich. More admitted to exchanging letters with Fisher, and to stating—hypothetically—that a law requiring a man do so something unconscionable or face capital punishment was like a proverbial “two-edged sword.” Since the letters had been burned, however, and no witnesses could testify to their contents, the Crown had no evidence to back up its assertions that More had explicitly encouraged Fisher to deny the supremacy or counseled him on how to answer specific questions (31–33). As for interrogation records indicating that More had admitted to unequivocally blaming the statute, Elizabeth McCutcheon’s later chapter on More’s prison letters masterfully demonstrates that More’s version of his interrogation—written as his own record of events before knowing how the prosecution would word its indictment—supports his later testimony and proves the Crown’s version to be fraudulent (96, 103–04).

Here we may recall that, on Derrett’s reading of Roper, the only evidence on which Thomas More was convicted was the testimony of Richard Rich. Despite Rich’s flagrant bias, Derrett regards his account as credible, even concluding that More in effect admitted to having spoken the words Rich attributed to him.¹⁷ Kelly ably exposes Derrett’s error in this regard. In his trial, More vigorously protested that Rich was committing perjury, adding that he knew Rich to have a reputation for dishonesty, and noting the incredibility of the idea that he would have revealed to Rich what he had concealed from his most intimate friends. This defense is incompatible with an admission of the accuracy of Rich’s report. The key to Derrett’s confusion here is Roper’s peculiar manner of relating the conversation that did take place. Beginning with More’s version of the account, Roper makes clear that the question under discussion was whether Parliament could make “all the realm...take [Rich] for pope.” Roper concludes his account with More’s alleged denial—“as Master Rich

reported of him”—that Parliament could make “the king Supreme Head of the Church.” The subtle but definite implication is that, in his version of the conversation, “Rich ‘changed cases’: instead of the actual example he used in his discussion with More, of himself as king being made pope by Parliament, he substituted in his report the example of the present king, Henry VIII, being made Supreme Head of the English Church, and falsely claimed that More denied that Parliament had the power to make such a declaration” (35–38).¹⁸ Unless we believe it plausible that More missed the difference between Rich as pope and Henry as head, or that, having confided his thoughts exclusively to Rich, he believed he could protect his conscience while lying under oath, then we must conclude that Rich’s testimony was (not surprisingly) as fraudulent as the other evidence against More.

Kelly next assesses the jury’s role in the trial. He notes that the verdict is variously described as having been returned immediately or within fifteen minutes, while the average deliberation in Tudor times took an hour. In addition to other indications of the jury’s bias, “Pole portrays them as swayed by the judges’ shouts of ‘Malice, malice!’ which were ringing through the courtroom.” Legally speaking, Kelly reminds us that (then as today) “[j]uries make up their mind any way they wish, and do not have to give an accounting of how they came to their decision,” and that they may even decide a case on the basis of a single witness (38–40). Nonetheless, Kelly finds the evidence on which the jury convicted More shaky enough to declare that “by objective standards, the jury was wrong to find him guilty.” “Far greater responsibility for this miscarriage of justice rested upon the commissioners,” however, including the prosecutors and judges, who formulated and carried out a fraudulent case against a man who “was not in fact guilty of violating the statute” (48–49).

Kelly makes a valuable contribution to our understanding of Thomas More’s trial with this powerful case that its conduct and verdict were in violation of positive law. Less convincing, however, is his analysis of More’s postconviction argument that “judgment should not be given against him” because the indictment was “grounded upon an act of Parliament directly repugnant to the laws of God and His holy Church,” as well as to “laws and statutes of our own realm yet unrepealed,” such as Magna Carta, and to the king’s “sacred [coronation] oath” (207). Noting that “there is no evidence, apart from Roper’s hearsay account, that [an appeal to higher law] was available in criminal cases,”

and that other accounts present different motives for More’s critique of the law, Kelly expresses significant doubt that More made such an appeal at all. If he did, Kelly maintains that the appeal had “no hope of success,” and that, rather than expecting his judges “to step forward and amend the constitution,” More must have understood himself to be “speaking for the future” (45–46, 49–50).

Given the court’s evident biases and distortion of the positive law in this case, it seems likely that no appeal, however legitimate, would have had much hope of swaying it. Yet in dismissing the idea of an appeal to higher law, Kelly is discounting not only the account of Roper, schooled as he was in contemporary law, but also the views of More himself. As Kelly admits, More as Chancellor of England had gone to great lengths to encourage judges, “upon reasonable considerations by their own discretions [to] mitigate and reform the rigor of the law,” and had used his own discretion to modify their cases as necessary (46). During his trial, More had argued not merely that the Act did not punish silence, but that neither it “nor anything in the laws of the whole world *can rightly*” do so (18, emphasis added). Against the purported duty of subjects to approve of the king’s laws, he had cited “a much greater obligation” to follow one’s conscience and reason (19). These and other details support Derrett’s claim that we have in the trial of Thomas More “a genuine conflict between two constitutional theories,” theories that respectively allow or deny effectual judicial appeals to higher law.

In the book’s second chapter, legal historian R. H. Helmholz considers the objective “fairness of the proceedings” against More—apart from the manifestly “political motives” behind them—through the lens of “the law of nature as it was then understood to relate to criminal proceedings.” Though distinguishing himself from Kelly, who judges the trial in accordance with “English law as it then stood,” Helmholz goes on to stress that his approach is “not anachronistic,” because “the law of nature was accepted as a valid source of law by all the participants in the trial.” Indeed, both “English common lawyers and Continental jurists” agreed that natural law was not only the foundation of legislative authority, but also a standard allowing “jurists to determine whether an enacted statute or a custom was a legitimate law.” Unlike Kelly, then, Helmholz holds out the possibility that “inconsistencies with the law of nature in the procedures” against More—if proved to exist—would of themselves invalidate his trial (53–54).

Helmholz’s approach involves discussing natural law

in relation to specific concerns in the trial. He articulates four questions about the conduct of More’s trial to which natural law principles apply. These include (1) whether More had a right to remain silent concerning the king’s supremacy; (2) whether the natural law required multiple witnesses for a conviction; (3) whether More could be compelled to affirm the supremacy against his conscience; and (4) whether the Acts in question were themselves “contrary both to the law of nature and to the law of God.” In order to answer these questions Helmholz relies heavily on the medieval *ius commune*—“Roman and canon laws...held to have been based upon the natural law” and “often cited” by “jurists of the time”—“to show what the law of nature should mean in practice” (55). On this basis, Helmholz concludes not only that “natural law proved too weak a reed to support the contention that these judges should have done something other than what they did,” but even maintains that, on some points, “the judges in More’s trial were doing what they were obliged to do under the law of nature” (69–70). Upon closer examination, however, this conclusion seems to follow from lacunae in Helmholz’s methods rather than in the natural law itself.

To begin with, Helmholz notes that it was “a rule of the natural law, one that had been made part of the *ius commune*” and “English common law,” that “no person should be punished solely for his thoughts.” Thus More’s chief defense—his silence regarding the king’s title—had a firm basis in natural law as well as in the wording of the Act of Treasons. Nonetheless, this rule was not “a blanket permission to refuse to answer relevant questions,” and therefore in certain exceptional situations even natural law allowed that one might have “a duty to answer yea or nay, even about his personal conduct and opinions.” Helmholz cites two examples: “a man elected to an ecclesiastical office” was required under inquest to answer questions about crimes he may have committed, on penalty of losing the election; and a man accused of a serious crime “must say whether he had committed the crime of which he stood defamed.” Having noted this “limitation of the right to silence,” Helmholz concludes that More’s appeal to the natural law on this point fails because such a limitation “could well apply in [his] case.” Given that More was not under consideration for ecclesial office, however, and that he was emphatically not silent regarding the question as to “whether he had committed the crime of which he stood defamed,” it is clear that neither of these exceptions applies to More’s case. Indeed, one cannot strictly

regard them as exceptions to the rule in question, since requiring a man to answer as to past crimes is not the same as requiring him to state his “thoughts.” Since More was silent only about his opinion of the supremacy, and not about his actions, it is clear that his conviction violated natural law at least to the extent that it rested on the notion that his silence was criminal.

Helmholz next considers the natural law rule, also included in the *ius commune*, “that there must be positive evidence before a person could be convicted of a crime.” Though not as strong on this point as Roman law—which demanded evidence “clearer than the noonday sun”—English law did direct jurors “not to convict unless what they themselves knew or had heard during the trial satisfied their consciences that the defendant was guilty,” by “direct and manifest proof” as opposed to “conjectural presumptions.” Unfortunately, Helmholz’s analysis of this point becomes sidetracked by the secondary question of whether the natural law also requires “evidence that agrees in substance and that comes from two witnesses,” as many held. Since More himself appealed to this rule, Helmholz is right to consider it, and he is also right to note that, at the time of More’s trial, English law had seemingly settled on the view that the twelve-man jury was an adequate substitute for the two-witness rule, or even superior to it. In light of this fact, it is plausible to think that More’s appeal to this rule was pitched more to the “court of public opinion” than to the court of law, and hence that “the English judges were not free to accept his argument under current common law” (59–63). Yet Helmholz fails to consider the more fundamental question of whether the testimony of the particular witness against More was sufficient to convict More under English law. That “Rich’s credibility was properly a question for the jury” does not address the question of whether a reasonable juror could find that the testimony of this “unsatisfactory witness” constituted “direct and manifest proof” of More’s guilt (59–60), not to mention the likelihood that the commissioners were aware of or complicit in Rich’s perjury. On this point as well it seems clear that More’s conviction violates natural law.

Helmholz now turns to “the most seemingly compelling argument More raised in his own defense”—“his invocation of the rights of conscience.” Since conscience is the “inner judge” by which individuals know and follow natural law, and since positive law “was itself regarded as a creature of the natural law,” and hence subordinate to it, “a person’s conscience might in effect dictate that he obey the former rather than the latter.”

Although English law affirmed and frequently appealed to this view of conscience, however, Helmholz aptly notes that, in a court of law, “a man’s conscience had to be aligned with right reason to serve as a legitimate justification for action.” Strictly speaking, “the dictates of a particular individual’s mind” could not, by themselves, justify the violation of otherwise just laws. While his statement that “for More, the rights of conscience did not extend to Protestants” is mistaken,¹⁹ Helmholz is correct to say that More’s appeal to conscience was ultimately dependent on the objective validity of his opposition to the laws in question (63–35). To be more precise, in combination with the wording of the Acts and the aforementioned rules of natural law, More could claim that his conscience—so long as it was sincere, even if erroneous—justified his silence on the supremacy and exonerated him from malice. These defenses having been rejected by the jury, however, More’s further appeals to conscience required that he demonstrate “the invalidity of the statute under which Henry VIII laid claim to the title Head of the English Church” (65).

Thus Helmholz comes to what is evidently the most vital point in More’s defense: his claim that “his indictment was ‘grounded upon an Act of Parliament directly repugnant to the laws of God and his Holy Church.’” Without discussing the distinction between divine and natural law, Helmholz notes that much of canon law was grounded in natural law, and that all agreed that “a statute contrary to the law of nature was void.” Canon law, Roman law, and the Magna Carta affirmed the “important principle necessary in all just law” that “Ecclesiastical liberty could not be transgressed.” Here again, More would seem to be on rock-solid ground. Yet Helmholz notes that “More himself had defended [the] validity” of “‘particular laws disagreeable with the general law’ of the Church”—namely those “that subjected the clergy to the jurisdiction of secular courts in civil cases,” despite the ruling of the Rota Romana that this policy violated “a fundamental part of God’s law.” While conceding that there is no necessary “logical inconsistency” in More’s positions, Helmholz proceeds directly from his “seeming [self-]contradiction” to the conclusion that “natural law did not reach down to the level of specificity required to distinguish between the Henrician statute and this long-established English jurisdictional rule.” Given the gulf between a secular government’s claim to jurisdiction in secular matters and its claim to hold supreme spiritual authority, however, More’s assertion that the supremacy was “directly repugnant to the laws of God and his Holy

Church” and to Magna Carta cannot be dismissed so easily.²⁰ Nor can the bare assertion of Parliament that its law sought “to extinguish the power which popes had unlawfully exercised within the English Church” suffice without examining its consistency with objective principles of natural and divine law (66–69).²¹

In addition to neglecting the substance of fundamental law on this point, Helmholz also claims that “the law of nature as then understood did not permit judges to ‘strike down’ (as we would say) the considered actions of their sovereigns.” Cautioning us against mental habits derived from modern judges’ “power to refuse to enforce unconstitutional statutes,” Helmholz claims that, in More’s day, “‘even the errors of the prince’ were to be treated as binding upon the judges” (68). Whatever contrary rules may have existed, however, it cannot be doubted that More and his judges were familiar with the by then venerable notion that judges have not only a right but also a duty to disregard legislative acts that appear to be laws but—due to their incompatibility with fundamental law—are not. Thomas Aquinas, himself standing upon centuries of precedent, could not be clearer on this point:

Just as the written law does not give [moral] force to the natural right, so neither can it diminish or annul its force, because *neither can man’s will change nature*. Hence if the written law contains anything contrary to the natural right, *it is unjust and has no binding force*. . . Wherefore such documents are to be called, not laws, but rather corruptions of law, . . . and consequently *judgment should not be delivered according to them* (emphasis added).²²

As Edwin S. Corwin has demonstrated, there is an ancient and noble tradition behind the modern doctrine of judicial review.²³ Given the intrinsic force of this tradition, its availability in More’s time, More’s known preference for judicial discretion, and Roper’s conviction that his appeal was intended to “a-void the law,” we find most plausible Derrett’s view that in principle the judges might have sided with More on this point. Instead, this manifestly partial court compounded its disregard for More’s sound positive law defenses with a failure to weigh the merits of his appeals to higher law.

A thorough weighing of those merits is beyond the scope of this essay. Even a brief review of certain basic tenets of natural law theory, however, will shed light on More’s legal strategy as a whole and on his arguments against the Act of Supremacy. This will enable us to see the formidable challenge his actions and words repre-

sent to the policies of Henry VIII and his collaborators, and to all who would shield state authority from the scrutiny of higher law.

To understand the relation between the natural and human laws, we must see what is essential to every law as such. Law is a measure of human acts, which are by nature directed toward the happiness of individuals and of the communities to which they naturally belong. Since reason and will are the faculties by which human beings naturally pursue happiness, every law must be an ordinance of reason directing men to the common good by means of rules made known to the governed by a commonly recognized authority.²⁴ The only law perfectly fitting this bill is the eternal law by which Divine Reason governs all things in accordance with their individual natures and for the sake of their common good.²⁵ Not only is the infinite wisdom with which God governs the cosmos inaccessible to man, but due to man’s possession of reason and free will, God has chosen to govern man in a peculiar way: by implanting within us certain principles or beginning points for sound reasoning about theoretical questions and practical affairs. Without these principles, knowledge of truth or the good would be impossible; but these principles do not in themselves answer particular theoretical or practical questions: rather, they are the tools by which efforts to discover the true and the good can proceed and at least sometimes succeed.²⁶ Since by nature such efforts are primarily on the part of individuals, the chief fruits of these principles are in personal intellectual and moral virtues. Since even the most extraordinary individuals are radically dependent on others for the development of such virtues, however, these principles cannot in fact be fulfilled without the coordination of individual efforts. It is precisely the function of human law to facilitate the happiness of individuals and communities by providing authoritative coordination of their collaborative efforts to fulfill the innate principles of practical reason—otherwise known as the natural law.²⁷

Two things follow from the above. First, since human law is nothing but an application of the natural law to human affairs—and an auxiliary application at that—it lacks moral force to the extent that it opposes or even neglects this end. Here it should be noted that there are two ways in which human law is derived from natural law: first, as a restatement of the principles of natural law itself or conclusions derived necessarily from them; second, “by way of determination of certain generalities,” just as a “craftsman needs to determine the general form of a house to some particular shape.” Since “the

general principles of the natural law cannot be applied to all men in same way on account of the great variety of human affairs,” this second mode of human law allows for great “diversity of positive laws among various people.”²⁸ Yet “the natural law is altogether unchangeable in its first principles,” and “in its secondary principles...is not changed so that what it prescribes be not right in most cases.”²⁹ Hence, in making and applying positive laws, the human legislator and judge are no freer to make or give judgment by laws contrary to primary or (barring exceptions) secondary precepts of natural law than is the craftsman to construct a house in defiance of the laws of physics.

The second corollary is that natural law, though it is superior to human law and primarily specified through personal virtues, cannot be fulfilled adequately without the assistance of human law. This hierarchical but mutually dependent relationship illuminates the perplexing dilemma that all too often arises when legal authority is abused. When a rule issuing from a recognized human authority clearly contradicts principles of natural law, it fails to direct men toward the good and therefore constitutes a corruption of law and cannot in itself bind individuals. Yet the recognition of its nonbinding character does not automatically authorize individuals to substitute a different rule—one in accordance with natural law—in place of the bad rule: only a recognized authority may do so.³⁰ While an individual with certain knowledge of the illegitimacy of a given rule is at liberty to disregard it, therefore, his ability to coordinate his actions (however justified) with others may be very limited unless he wields authority himself or has recourse to someone who does. Compounding this problem is the fact that the authority responsible for the unjust rule will in most cases remain a valid authority, and most of its rules valid, so that any opposition to one of its rules (however justified) must be carefully tailored to avoid undermining its general legitimacy. Only a prudent weighing of the evils caused by a particular unjust rule against the likely benefits or harms of particular means of opposing it can determine the appropriate response to a particular case. Prudence is not to be confused with either timidity or subjectivity, however, and there are cases where prudence demands that a grave injustice be resisted even at the risk of serious harm to oneself or others.³¹

In light of these considerations, More’s mode of opposition to Henry VIII’s usurpation of spiritual supremacy makes good sense. As an advisor to the king, More counseled against policies tending in this direc-

tion, and resigned his office when it became clear that he could no longer avoid cooperating with them. As a private citizen More refrained from commenting on the king’s remarriage or supremacy, not only for fear of punishment but also out of reverence for the genuine authority of the king in Parliament. In the meantime, More published voluminous writings in which he strove to defend other elements of traditional political-ecclesial order, making it clear by implication why he opposed Henry, while accepting that he was in no position to advance the argument explicitly.³² In doing so More knew that he risked retaliation, but he was prepared to spend his life in prison, where he could tend to his own soul and hope to continue to publish, rather than accede to the title or openly repudiate it. When charged with a capital offense, More staked his defense on subtle but sound details of statutory, common, and natural law, still without breaking his silence on the Act. Only when convicted (contrary to positive law) was More compelled to break this silence. The various motives for More’s final speech given in different reports were under the circumstances impossible to separate: More had to state his case against the supremacy not only to exonerate his own conscience and warn his fellow countrymen of the error into which their governors were leading them, but also if possible to void the indictment and prevent the judges and jury from committing a grave injustice. For if in More’s judgment the evil of Henry’s policies was grave enough to force him to resign the Chancellorship and face royal wrath, then certainly these ministers of justice had a duty to refuse to send a man to his death for failing to proclaim his agreement with pseudo-laws advancing those policies; and if More hoped to meet his earthly judges merrily in heaven, as he prayed he would (208), then he had a duty to remind them of their duty.³³

What, then, was More’s natural law case against the supremacy? More’s famous declaration that the Act of Supremacy was “directly repugnant to the laws of God and His holy Church, the supreme government of which” was given “to the see of Rome...by the mouth of Our Savior Himself” (206–07) may at first seem to be rooted wholly in divine rather than natural law. Of course, More was indeed appealing to divine revelation, which in addition to natural law was accepted as higher law in England as in all Christendom. In fact, as More knew, Henry’s claim to spiritual headship rested on a contrary and, he believed, insupportable reading of divine law.³⁴ Here the modern reader will be inclined to dismiss the entire dispute as purely religious and

therefore hopelessly subjective in nature. It must be not be forgotten, however, that More and his opponents operated on the conviction that divine law, as all law worthy of the name, is an ordinance of reason (in this case Divine Reason) given for the direction of free and reasonable beings. As such, it is impossible for principles of divine law to conflict with principles of natural law, or for proper applications of one to be at odds with those of the other. In this sense, natural and divine law appear not only as coequal authorities in human affairs but also as interpretive keys to one another and to the human law that stands in their mutual service.³⁵

Though natural law cannot by itself resolve conflicting claims to spiritual authority, it can provide a basis for eliminating claims clearly at odds with fundamental principles of practical reason. Such was More’s argument that the Act was “in law amongst Christian men insufficient to charge any Christian man” (emphasis added). In proof of this assertion, More noted that England, “being but one member and small part of the Church, might not make a particular law disagreeable with the general law of Christ’s Universal Catholic Church,” any more than the city of London could pass legislation “against an act of Parliament to bind the whole realm” (207). Here More alludes to a fundamental principle of theoretical reason—that the whole is greater than its parts—and to two elements of the definition of law: to bind in conscience, a rule must be reasonable and must proceed from “the whole multitude” of those affected, or from “a public person who has care of the whole multitude.”³⁶ It follows that any rule purporting to bind “Christian men” as such must proceed from the entire multitude of Christians or a public person with care over them. After careful study of the matter, More thought it indisputable that “the general counsel of Christendom” for fifteen centuries confirmed that the care of “Christ’s Universal Catholic Church” had been granted by Christ himself “to St. Peter and his successors” (207). In any case, he knew it to be impossible—because contrary to reason itself—that one part of Christendom could make laws binding on the whole. For Henry to claim *supreme headship over the Church*—even with the backing of “the bishops, universities, and best learned of [his] realm”—was to claim to determine the structure of Christianity as such, and therefore, despite the qualifying words “in England,” to assert that a “small part” was greater than its whole (207).

More’s claim that he was “not bound...to conform [his] conscience to the counsel of one realm against

the general counsel of Christendom” (208) may sound obsolete in the context of a world in which most sovereign states have officially divested themselves of all connections to religious authority, and in which Christendom itself has splintered into thousands of more or less independently operating sects. When we consider his statement’s grounding in natural law, however, and natural law’s unique status as a universal, innate set of principles standing above all human authority and capable of assessing the cogency even of claims to divine authority, we may at least begin to glimpse the merits of bringing More’s approach to bear on the problems of contemporary liberal democracy. As Hadley Arkes argues, our contemporary reduction of conscience to “any conviction that a person holds with earnest passion,” while relieving conscientious objectors of the burden of providing “reasons that are accessible even to people who do not share [their] convictions,” also denies them access to objective justiciable criteria according to which governmental authorities can be required to provide “the justifications that should be required in imposing laws restricting personal freedom.”³⁷ Under such conditions, individual rights are slowly but surely being recast as arbitrary constructs of state power rather than objectively grounded limitations upon it. The development of a contemporary Morean approach—one that would combine the astute use of positive laws with a robust appeal to universal principles of practical reason—is of course a task for another time, but the editors of *Thomas More’s Trial by Jury* are to be commended for shedding so much light on the nature of a dispute whose fault lines connect so clearly to problems we face today. ❧

ENDNOTES

- 1 Parenthetical references are to the volume under review.
- 2 Philip Hughes, *The Reformation in England, Volume I: “The King’s Proceedings”* (London: Hollis & Carter, 1950), 225.
- 3 See especially the volume’s third chapter, “A Guide to Thomas More’s Trial for Modern Lawyers,” by attorneys Louis W. Karlin and David R. Oakley (71–93).
- 4 See Mary Ann Glendon, “Religious Freedom—A Second-Class Right?” *Emory Law Journal* 61 (2012): 971–90.
- 5 Hilaire Belloc, *Characters of the Reformation: Historical Portraits of the 23 Men and Women and Their Place in the Great Religious Revolution of the 16th Century* (London: Sheed & Ward, 1936), 141–43. Thomas Higgins defines the sovereignty of nations in more flexible terms, compatible with the nation’s duty to comply with natural and international law (*Man as Man: The Science and Art of Ethics*, 2nd ed. [Milwaukee: The Bruce Publishing Company, 1958], 535–47).
- 6 Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, MA: The Belknap Press of Harvard University Press, 2003), 61–62.

- 7 *A Letter Concerning Toleration and Other Writings*, ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 49–50.
- 8 If, as the court claims, “the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life,” then liberty is conceptually incompatible with traditional Christianity, along with many other religious and philosophical traditions. Hence the government, far from being neutral, must regard these traditions as theoretically void, and in practice tolerable only to the extent that they accommodate practices rooted in contrary belief systems. See “Planned Parenthood of Southeastern Pennsylvania v. Casey” (1992), quoted in *American Political Rhetoric: Essential Speeches and Writings*, ed. Peter Augustine Lawler and Robert Martin Schaefer, 7th ed. (Lanham, MD: Rowman & Littlefield, 2016), 288.
- 9 *The English Historical Review* 312 (1964): 449–77.
- 10 Derrett, “Trial,” 456.
- 11 Derrett, “Trial,” 451, 468, 475, 477.
- 12 Derrett, “Trial,” 455.
- 13 Here and elsewhere we have modernized obsolete spellings.
- 14 Kelly does consider it likely that other witnesses were called (17), but there is no record of any other witness giving evidence against More, and this may be the point Roper is making.
- 15 Quoting William Rastell’s *Life of More*, found in Nicholas Harpsfield’s *Life of More*, ed. Elsie Vaughan Hitchcock (London: Early English Text Society, 1932).
- 16 More’s exact words—“if it is true”—suggest that he was aware of this imprecision in his appeal.
- 17 Darrett, “Trial,” 463.
- 18 Less convincing is Kelly’s suggestion that Rich contradicts himself when he testifies that he ended the conversation by rebuking More for his silence—a silence that would already have been broken were Rich’s account accurate (37). Rich may simply have been referring to More’s “concealment” of his views under official interrogation.
- 19 Kelly notes that “when More defended bishops’ procedures against suspected heretics in response to Christopher St German’s charges, he repeatedly insisted that he knew of no case in which heresy suspects were ever condemned without positive proof of previous misdeeds, not simply for hitherto unexpressed beliefs” (30). More consistently held that men (Protestant or not) should only be punished for acts in violation of valid laws.
- 20 As Wegemer notes, More “advocated the traditional ‘two swords’ theory whereby distinct and separate authorities existed to rule over separate jurisdictions: the church over matters religious, the state over matters temporal” (*Thomas More on Statesmanship* [Washington, DC: The Catholic University of America Press, 1996], 188).
- 21 G. R. Elton refers to the Crown’s claims regarding the history of spiri-

- tual authority as “impossible to substantiate.” Quoted in Travis Curtright, “Sir Thomas More and His Opposition to Henry VIII in 1533,” in *Thomas More: Why Patron of Statesmen?* ed. Travis Curtright (Lanham, MD: Lexington Books, 2015), 124.
- 22 *Summa theologiae* II-II, q. 60, a. 5 (Latin/English edition [Lander, WY: The Aquinas Institute for the Study of Sacred Doctrine, 2012]).
- 23 *The “Higher Law” Background of American Constitutional Law* (Indianapolis: Liberty Fund, 2008). See also Stephen M. Krason, “Constitutional Interpretation, Unenumerated Rights, and the Natural Law,” *The Catholic Social Science Review* 20 (1996): 20–31. Jean Porter, in *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids, MI: William Eerdmans Publishing Company, 2010), cites “an early–eleventh-century legal manual...intended as a practical guide for the courtroom” stating that “If anything useless, broken, or contrary to equity is found in the laws, we trample it underfoot” (45–46).
- 24 *Summa theologiae* I-II, q. 90, aa. 1–4.
- 25 *Summa theologiae* I-II, q. 91, a. 1.
- 26 *Summa theologiae* I-II, q. 91, a. 2; q. 94, aa. 1–2.
- 27 *Summa theologiae* I-II, q. 91, a. 3; q. 92, a. 1; q. 94, a. 3; q. 95, aa. 1–2. Error and vice complicate the provision of such coordination, but human law would be necessary even without them.
- 28 *Summa theologiae* I-II, q. 95, a. 2.
- 29 *Summa theologiae* I-II, q. 94, a. 3.
- 30 Why would recognized authorities make a bad rule and then remedy the situation? The classical notion of a “mixed regime” and modern concept of “checks and balances” are intended precisely to provide opportunities and incentives for one part of a government to remedy the faults of another. See Aristotle, *Politics*, book 3 (2nd ed., trans. Carnes Lord [Chicago: The University of Chicago Press, 2013]; Publius, *The Federalist*, no. 10 (ed. George W. Carey and James McClellan [Indianapolis: The Liberty Fund, 2001]).
- 31 *Summa theologiae* I-II, q. 96, a. 4; q. 97, aa. 1–2, 4; II-II, q. 104, a. 5.
- 32 See Curtright, “Opposition.”
- 33 More’s wish does not imply that he found his judges faultless for condemning him (69); by comparing himself to St. Stephen and them to St. Paul, he implies that they stand in need of conversion (208; see Acts 7, 9).
- 34 As Darrett says, “More’s judges and More were not disagreed on the fundamental hypothesis; where they differed was in the interpretation of the law of God” (“Trial,” 475).
- 35 *Summa theologiae* I, q. 1, a. 8; I-II, q. 90, a. 4.
- 36 *Summa theologiae* I-II, q. 90, aa. 1, 3; q. 94, a. 2.
- 37 “Recasting Religious Freedom: It is the Content and not the Sincerity of Our Beliefs that Matters,” *First Things* (June 2014), available at <http://www.firstthings.com/article/2014/06/recasting-religious-freedom>.

Conflict

The Jurisprudence of Benedict XVI vs. that of August Comte

by Jude P. Dougherty
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In his address to the German Bundestag on September 22, 2011, Benedict delivered a lecture on the framing of law that is worth revisiting in this election year. Well, in any year. Speaking to that body of lawmakers, he asks, “How do we recognize what is right and may be given the force of law?” In our complex society, what is right and may be given the force of law is in no way self-evident.

Christianity, Benedict reminds his audience, has never proposed a revealed law to the state and to society, that is to say, a juridical order derived from revelation. Instead, it has pointed to nature’s order and used reason in determining the nature of law. The creation of just law, he says, presupposes not only an understanding of what is right but the will to do what is right. Benedict quotes St. Augustine’s dictum, “Without justice what is the state but a great band of robbers?”

In his view, for most matters that need to be regulated by law, the majority view of the electorate may well serve as a sufficient criterion. Yet it is evident that for the fundamental issues of law in which the dignity of man and humanity are at stake, the “majority principle” is not enough. Everyone in a position of responsibility, while taking note of the popular will, must nevertheless independently seek out the criteria to be followed when framing laws. In times past, one could appeal to a divinely created natural law. But that is not possible given the present intellectual climate. “The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term.”

Benedict then takes note of the is/ought issue, and the positivist doctrine that one can never derive an “ought” from an “is.” Positivism, in limiting knowledge to sense experience, deprives one of an acknowledgment of purpose in nature. Without assent to the exist-

ence of God, an appeal to nature’s order is not possible. Late eighteenth- and early nineteenth-century empiricism transformed the Western mind by limiting reason to the empirically discernable, thus making impossible rational proof of the existence of God. David Hume, as a result of his empirical analysis of causality, concluded that there is no evidence for the existence of God. Immanuel Kant concurred, and in his famous *Critique* set aside reason in order to make room for faith. By contrast, Benedict will affirm that the existence of God can be philosophically demonstrated, for reason is much more powerful than the positivist admits.

Some years before his address to the Bundestag, Benedict spoke to fellow academics at the University of Regensburg, where he was once a professor, and addressed this same issue. Defending the intelligibility of nature and the intellect’s ability to uncover its order, he spoke of “the inner-rapprochement between Biblical faith and Greek philosophical enquiry.” “Christianity,” he reminded his listeners, “despite its origins and some significant developments in the East, finally took its historically decisive character in Europe.” Its Greek indebtedness formed and became an integral part of the Christian faith. Those who call for the de-hellenization of Christian faith are, in effect, attacking Christianity itself. Benedict explains, de-hellenization first emerged in connection with the postulates of the Reformation in the sixteenth century. Looking at the tradition of scholastic theology, the Reformers thought that they were confronted with a faith system totally conditioned by philosophy, that is to say, an articulation of the faith based on an alien system of thought. As a result, to the Reformers, faith no longer appears as a living assent to the historical Word. The principle of *sola scripture* followed, faith in its pure primordial biblical form with no metaphysical gloss. When Kant signed on to this conception of faith, he carried this program forward “with a radicalism the Reformers could have never foreseen.”

August Comte (1798–1857), who coined the word “positivism” and is known as the Father of Sociology,



advanced a notion of science that limited knowledge to that attained by sense experience. Comte's positivism, grounded as it was in the empiricism of his day, ruled out not only metaphysics but theoretical physics as well, and both for the same reason, the denial of the classical understanding of the principle of causality. According to Comte, physics errs, as does metaphysics, when it postulates unseen or abstract entities as causes. Comte, of course, wrote years before theoretical physics came into its own with atomic and subatomic explanations of natural phenomena.

In limiting knowledge to the strictly empirical, the positivist maintains that anything that is not empirically verifiable or falsifiable does not belong in the realm of reason, strictly speaking. "Hence ethics and religion," Benedict notes, "must be assigned to the subjective field, and they remain extraneous to the realm of reason in the strict sense of the word." He then continues: "Where positivist reason dominates the field to the exclusion of all else—and that is broadly the case in our

public mindset—the classical sources of knowledge for ethics and law are excluded. This is a dramatic situation that affects everyone, and on which a public debate is necessary. Indeed, an essential goal of this address is to issue an urgent invitation to launch one."

Although events in the past century have undermined the philosophical foundations of positivism, the outlook is apt to survive any and all critiques for reasons that have little to do with scientific explanation. It is a willful position. Comte recognized that the social implications of the empiricist position led directly to a secular humanism which he codified in his "religion of humanity." His social philosophy may rest on a philosophy of science long outmoded, but as Benedict observed, his influence remains formidable in the social sciences and in the philosophy of law. In the final analysis we recognize that positivism is a socio-political movement, willfully embraced, with consequences a de-Christianized Europe is experiencing today. ✠

Migration

by Jude P. Dougherty
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Migration is a characteristic of the human race. Man moves, and then moves again, for a thousand reasons: floods, famine, conquest, persecution and subjugation, economic opportunity. Anthropologists tell us that the earliest traces of human activity show evidence of people coming, planting, building, and then vanishing, perhaps to some better place, taking their culture with them and leaving evidence of it behind them. Perhaps every migration is different, but the hope for something better appears common to them all.

Once over lunch in Buenos Aires I asked my host Guido Soaki Ramos, "Where are your people from?" "Tucuman," he replied. "I know that, but everyone who is not what we call a Native American is from some European country." "Indeed, Buenos Aires has been called the most European city in the world," Guido replied. "I don't know—my people have been here for over 400 years. I have a Spanish name and I speak Spanish, that ought to give you a hint." "But you also speak

English and German," I objected. I could have added that Soaki was also steeped in classical Greek and Roman philosophy, and conversant with modern political theory from Hobbes to John Rawls. We were bonded not only by our common philosophical outlook but by our love of wines from his native Mendoza.

I will speak of the migration that brought my ancestors to North America in the nineteenth century, first on the German side. (I should mention there was no Germany at that time, only German-speaking lands; it was not until 1870 that Bismarck unified the old country.) My grandmother shared with me at an early age that the men of our family had come to America in 1804 to avoid conscription into Napoleon's army. In December of that year, ninety miles to the north of Vienna, Napoleon suffered around 7,000 casualties at the battle of Austerlitz, and his allied opponents about twice that. My ancestors were wise to have left.

My family put down roots in the Rhineland of America, the Ohio Valley, having come by boat from Pittsburgh. Evidence suggests that the men were from Bavaria or Austria. They came with various skills. My grandmother's father was a pharmacist. His sister

worked with the blind and became an official at the Louisville School for the Blind. Some of the men were farmers, others craftsmen. There is evidence that they came with sufficient money to buy land and to build on it. They prospered.

My father was born in Dubuque, Iowa, my mother in Louisville. In Chicago, my father managed one of the great hotels of that time, the Edgewater Beach. He never owned or drove an automobile in his life. My mother, busy raising two small children, of course needed one. I still remember her tan-colored 1932 Essex. Perhaps I should mention that before marriage, my mother traveled the country in the art reproduction business. She was charmed by the Spanish renaissance culture of California, and I had a sister named Inez Juanita Dougherty. Some inconsistency there.

I think it likely that my ancestors were of Austrian origin. Once at the opera in Vienna, I spotted three women who looked exactly like how I remembered my mother, who died when I was seven. She would have been about 47 years old at that time, the median age of the ladies I saw at the opera.

Today as then, the migrant comes with what he has achieved. Yes, you take yourself with you wherever you go, and industry, thrift, and self-discipline are virtues that pay off in the new country or the old.

I have less information about the Irish ancestors on my father's side, but the Irish migration to the States is well documented. The mass Irish migration occurred after 1840 and continued through the century as tens of thousands sought a better life.

Today, the U.S. is experiencing another mass migration to its shores, with millions seeking economic opportunity and escape from authoritarian rule. But there is this major difference between them. European immigrants came from a common culture. From Belfast to Naples they shared some form of Christianity. Europe itself was known as Christendom. European migration to North America resulted in more than 50 percent of the nation having some German or Irish ancestry. That

figure may no longer hold, given that immigration policy has shifted dramatically. Its aims—which have never been adequately justified in public discourse, much less put up to a referendum by the American electorate—are diversity for its own sake, with the result that we are no longer united by a common European heritage. The U.S. remains a land of opportunity for the immigrant, but the shell of Christendom has been broken.

Perhaps no one has seen more clearly the need for cultural unity than Moses Mendelson, grandfather of Felix Mendelson, the famous composer. In the nineteenth century, Mendelson urged Jews to leave the ghetto, to learn the German language and assimilate into the common culture. They did so with remarkable results, especially in the natural sciences, physics and chemistry. Michael Polanyi, a Hungarian Jew, emigrated to Germany and was so pleased with the reception he received that he was reluctant to leave after Hitler's rise to power. He felt an obligation to his host country and remained there as the situation darkened, immersed in his work, even declining an offer from Cambridge. Fortunately, Polanyi's mother was street smart. She knew what was going on in the populace, whereas he was somewhat isolated in his laboratory. Polanyi did accept a second offer from the Midlands in England and later migrated to the U.S. when an offer was extended by the University of Chicago. He concluded his career as a social theorist, having seen firsthand how easily a great culture could quickly succumb to alien forces.

What the future portends for the U.S. as a result of uncontrolled and unguided immigration is unknown. We know that it has had the immediate effect that the U.S. is no longer a unified nation. Yet a certain unity is necessary for community. Without allegiance to a common set of principles, community will forever remain elusive. Community is necessary for meaningful action at each level—local, state, and country. If the immigrant refuses to assimilate and prefers to live exclusively within his native culture, the prospects for the country are not too good. ✠

A Feminist Argument for a Male-Only Priesthood

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Sometimes arguments for the male-only priesthood rely on the idea that man is naturally superior and prior to woman, based on the understanding that man was created first and then woman from man's side. This is also often taken as the reason why God became male instead of female. In this anthropology, a distorted conception of "headship" often trumps "mutual subjection" (Eph 5:21); meanwhile, in his *Theology of the Body*, Pope St. John Paul the Great interprets the famous "submission" passages in Paul's writings through the lens of Eph 5:21, which serves as a remedy for the male domination that followed the fall from original justice.¹ It is also argued from passages concerning who ought to teach in church that males somehow have superior capabilities when it comes to instruction. In reality, Paul mentions beloved women coworkers (Rom 16:1-6; Cor 16:19; Acts 18:18-19) who justly instruct men in the faith (Acts 18:26), and other passages commonly understood to subvert women are actually examples of Paul combating either male domination or the pagan notion of female superiority that had seeped into some of the nascent Christian churches, as is clear in Catherine Kroeger's exegesis of 1 Tim 1-2 and Joseph Fitzmyer's exegesis of 1 Cor 14:34-35.² But, according to misogynist anthropology, it is not surprising that Jesus chose only men to be apostles, and they in turn appointed only men as *episcopoi* (bishops) to oversee the churches they established.

In response to this faulty anthropology, one might ask: if "man is the glory of God" and "woman is the glory of man" (1 Cor 11:17), then isn't woman the crown of God's creation? If, as the scholastic axiom has it, "what is last in execution is first in intention," then wasn't Adam created with a view toward Eve? If Eve is to blame for tempting Adam into sin, and Mary's "Yes" a reason for the Incarnation, then isn't there something to be said for the uniquely powerful qualities woman brings to the world?

In any case, the ultimate foundation of all arguments in defense of the male-only priesthood is the

male identity of Christ himself and the purpose of the priest as sacramental representative of Christ, the exemplar intermediary between God and mankind. Instead of relying on misogynist anthropology to defend the male-only priesthood, I propose another way of formulating the central argument in favor of the Church's longstanding fidelity to the apostles (and ultimately, Christ): (1) Incarnation is the act of humility par excellence, so if he chose to become male rather than female, it would seem that he deemed the male sex humbler in nature than the female. (2) Females are excluded from the priesthood because priests are called to act *in persona Christi capitis*, and gender is an essential feature of the person's identity. (3) Therefore, females are excluded from the priesthood not because they are inferior to males, but because they are less base by nature and thus by grace called to imitate the most sublime creature of God, the mother of the Incarnate Word and the mother of his high priesthood.

St. Therese of Lisieux is known to have said, "There is nothing more precious than the heart of a mother." Yet at times women are maligned as "useful" only for procreation (or, worse still, for sexual pleasure). Such a mindset is not only utilitarian, but also a perversion of truth precisely by taking something of such immense value and debasing it, subverting its purpose as a bodily expression of the person in self-donation; hence, as the scholastic axiom has it, "the corruption of the best is the worst." In many places, but especially in *Mulieris dignitatem*, John Paul the Great, a profound devotee of the Blessed Virgin Mary, champions the sublimity of the feminine genius and the maternal vocation.³

Contrary to Simone de Beauvoir's Freudian reflections on "penis envy" in her monumental work, *The Second Sex*, a theory which lends itself to the view that one sex is distinct from the other by a "missing appendage,"⁴ females are set apart from males precisely by the fact that their entire bodily identity is oriented toward the possibility of bringing new life into the world. Thus, because the maternal instinct sustains the well-being of offspring, women are the heart of the family, which need not be put in opposition to the "head," as if males are the brains. Man and woman think differently,

as even neurological studies have discovered. While men usually think more abstractly and women more pragmatically, women generally have higher emotional quotients than men, and certainly emotion is utilized in cognitive functions, not to its detriment necessarily, nor always to its benefit. The health of one's emotional life affects the health of one's mental life, and vice versa. Each way of thinking, male and female, has its own strengths and weaknesses, and thus the male-female dynamic cannot be reduced to strength-weakness (or to activity-receptivity). Even more obvious than the mental and emotional differences are the physical differences; men are almost always physically stronger. It may appear that the male-only priesthood has nothing to do with all this. On the contrary, the complementary differences between the sexes may shed some light on the realm of grace as well as the realm of nature (e.g., the need for children to have both father and mother), since "grace builds on and perfects nature," a famous principle of Catholic theology elucidated by St. Augustine of Hippo.

Perhaps God became male in order to spare woman the physical pain she already sufficiently endures, as he was destined to die crucified before rising from the dead; a woman would never have been crucified. Jesus also spared the holy women the dangers inherent to being one of the Twelve, the leaders of his Church, all martyred except for John (who was, nonetheless, exiled). Hence, the female disciples were not excluded from the Last Supper because they were not worthy of the priesthood, instituted by Christ's command that the Twelve repeat the acts by which the Passover sacrifices would be superabundantly fulfilled in the Eucharistic liturgy, the making-present of the new and everlasting covenant of the Lamb of God. No one is worthy of the priesthood. But Christ called the men to be the servants of his bride, the Church (the community of faith). Hence, men are called to serve women, and women are called to graciously accept their service. The married man must die (to himself) for his wife, and the woman perfects her husband by allowing him to do so, by letting him be the first to serve and the last to be served. Priests actually serve two women, both mothers—Holy Mother the Church and the Mother of the Church, the Blessed Virgin. The priest washes the feet of all those who make up the Church, who are served by Christ himself in the sacraments.

Despite Jesus' disobedience to the Jewish customs of the time with regard to women (e.g., letting a prostitute touch him, talking to women in private), he did

not call any of the holy women, even his own mother, to lead the nascent Church to which he promised the everlasting guidance of his Holy Spirit (see Jn 14:26, 15:26). While man's physical strength is called to suffer humiliation in love, the woman's rich emotional life is called to share in the suffering of Mary's own heart. In reflecting on his vocation as a priest, John Paul the Great likens his mission to the simple purpose of a floor, namely, to be walked on.⁵ This is a provocative expression of the priestly call to be the servant of all, especially the bride of Christ, the holy mother of his flock, the Church. It does not mean men are called to be pushovers. But it does mean that men are called to die (to self), like Christ, in humble submission to the will of God, enabling women to live their own unique vocations, principally spiritual maternity. Men are granted the original vocation of Adam—that of humbly enduring the Lord's tests; meanwhile, women are so loved/served by men that, in turn, they love more fully in a life-giving manner.

At an interesting point in his landmark book on sexual ethics, *Love and Responsibility*, philosopher Karol Wojtyla opines from his pastoral experience that while men generally want to love so that they may be loved, women want to be loved so that they may love.⁶ Wojtyla does not understand love simply in terms of service, but ultimately as total mutual self-giving, where goodwill is the most sublime element of love, enabling sentiment and sensuality to be integrated into an exclusive and reciprocal lifelong commitment to the person as such (hence love brings forth a *communio personarum*). Hence, in the Judeo-Christian tradition, God is the Father who loves unconditionally but unrequitedly—God loves that he may be loved precisely because his love is the cause of all good (e.g., willing the good of the other). In fact, it angers him that he is not loved in return to such an extent that his love demands a perfect return, which is fulfilled in the redemptive incarnation. Peter Kreeft reflects on why God is revealed to Israel as father rather than mother (although his love is also poetically compared to that of a mother): while the father plays a largely external role in the generation of offspring, the child grows inside the mother, exchanges life-blood, and even after birth remains radically dependent on the mother. At the time of God's self-disclosure to the patriarchs and prophets (chiefly, Moses), the prominent pagan *cultus* regarded the world as part of God (hence the multiplication of goddesses), and thus the God of Israel sets himself apart from the pagan gods by revealing himself

as radically independent of his creation.⁷

Bringing these two insights together, God does not need to be loved in order to love, but there is a sense in which he loves (through creation) in order to be loved (by the blessed), that is, in order that his glory might be more manifest. Meanwhile, the People of God need to be loved in order to love; the Church is thus served by the Lord in order to serve the Lord. Priests are called to represent the Lord, to act *in persona Christi capitis*, and therefore serve the Church in order that Christ might be glorified in them, but they are not called to be mothers, to be given the love that is newborn life itself in order to love and rear that life. They administer supernatural life, but from afar, unworthy servants of the mother of all, who alone is worthy to rear the children of God. The Church is not part of the priesthood, just as the world is not part of God (incarnate in Christ); rather, the Church is the beloved of God and the priest is her servant, the means through which we the Church are loved that we might love the Lord as his “humble handmaidens” (Lk 1:48).

The Church is fundamentally female in relation to Christ as male. In the priesthood males are called to be humble servants of the bride of Christ. His bride is his very own body because “the two [have] become one flesh” (Mk 10:8, Mt 19:6, 1 Cor 6:16, Eph 5:31). But females, like Mary, are called to be humble servants of the Lord. As the Blessed Virgin exclaims, filled with the Holy Spirit, the spouse of her soul and the soul of the Church, the humble are exalted and the proud humbled (see Lk 1:52). It is also true that “the first shall be last and the last shall be first” (Mt 19:30, Mt 20:16, Mk 10:31, Lk 13:30); hence, every person of faith is humbled and exalted in different ways, according to the strengths and weaknesses of each. “My power is made perfect in weakness” (2 Cor 12:9). All are called, in some sense, to

be betrothed to God, but the priest is called to serve God as present in the body of Christ, while the holy women are called to serve the Holy Spirit as soul of the Church. Hence, as “a married man is concerned about...how he can please his wife” (1 Cor 7:33), spiritual paternity is tending to the flock’s needs. But while spiritual paternity is busy with the affairs of God’s house (with the contemplative life feeding the active life, nonetheless), spiritual maternity is caught up in “the one thing that matters” (see Lk 10:42), matters of the heart, the life-blood of both the natural family and the supernatural family, the Church. What a sublime gift it is, then, to be one who brings into the world a sacramental representative of Christ’s mediation, offering to God her sons in oblation to the Father, as Mary offered her only son, the only begotten eternal Son of God, as a sacrifice for the world pleasing to the Father by the power of the Holy Spirit! ✠

ENDNOTES

¹ See the definitive translation by Michael M. Waldstein, *Man and Woman He Created Them: A Theology of the Body* (Boston: Pauline Books & Media, 2006).

² See, e.g., Richard and Catherine Clark Kroeger, *I Suffer Not a Woman: Rethinking 1 Timothy 2:11-15 in Light of Ancient Evidence* (Ada, MI: Baker Academic, 1998), and Joseph Fitzmyer, *First Corinthians* (New Haven, CT: Yale University Press, 2008), 528ff.

³ This 1988 Apostolic Letter concerning the dignity of woman can be accessed on the Vatican website at http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html.

⁴ See Simone de Beauvoir, *The Second Sex* (London: Vintage Classics, 1997).

⁵ See Pope John Paul II, *Gift and Mystery: On the Fiftieth Anniversary of My Priestly Ordination* (New York: Image, 1996), 45.

⁶ See *Love and Responsibility*, 1st ed. (New York: William Collins Sons & Co., 1981), 179.

⁷ See Peter Kreeft and Ronald K. Tacelli, *Handbook of Catholic Apologetics: Reasoned Answers to Questions of Faith* (San Francisco: Ignatius Press, 2009), 104-05.



Pope Francis as Apologist¹

by Glenn B. Siniscalchi, Ph.D.

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Alively and outspoken pontiff, Pope Francis takes up frequently the credibility of Catholic and, indeed, Christian faith. Three years after his election in March 2013, we can glean from his encyclicals (*Lumen fidei* and *Laudato si*), apostolic exhortation *Evangelii gaudium*, and other writings clear lines in his apology for faith. Because many commentators have misinterpreted several of the pope’s statements, it might be profitable to delineate his teachings on credibility. Such an endeavor should be paramount for theologians and philosophers considering the biblical mandate to evangelize the world (Matt 28:18-20). How does Francis understand the case for Christian faith in the life of the Church in the modern world? This article will focus exclusively on the pope’s writings to answer this question.

Remaining faithful to Scripture and Tradition, the pope articulates his answers to modern challenges in fresh new ways: “We need to develop a new synthesis capable of overcoming the false arguments of recent centuries. Christianity, in fidelity to its own identity and the rich deposit of truth which it has received from Jesus Christ, continues to reflect on these issues in fruitful dialogue with changing historical situations. In doing so, it reveals its eternal newness.”²

THEORETICAL APOLOGETICS AND CATHOLIC CREDIBILITY

One of the central beliefs of Catholic Christianity is the omnibenevolence of God. By accepting God’s love in Jesus Christ, every believer is called to love those whom God loves. As Francis explains: “Those who have opened their hearts to God’s love, heard his voice and received his light, cannot keep this gift to themselves.”³ Since we are called to love *everyone*, it follows that followers of Jesus will speak the truth to the beloved.⁴ For, love speaks—and therefore defends—the truth. At this juncture in the spiritual life we ought to recognize the importance of developing the skill of understanding and articulating the reasons for and against the Gospel.

The enterprise of “giving reasons for faith” clashes with the philosophies of relativism and indifferentism.⁵ Such philosophies make it difficult to posit the Christian faith as objectively true. Given the current cultural milieu of relativism, Francis affirms the necessity of providing reasons in support of the Gospel: “Theology...must be at the service of the faith of Christians, [and] work humbly to protect and deepen the faith of everyone, especially ordinary believers.”⁶ Elsewhere, we read: “The Church must offer abundant signs of God’s presence and closeness.”⁷

If an evangelist’s interlocutors can apprehend the rationale for the truth of the Gospel message, then the discipline of Catholic apologetics might become a useful tool in the hands of an evangelist. In his Apostolic Exhortation, *Evangelii gaudium*, the pope declared:

Proclaiming the Gospel message to different cultures also involves proclaiming it to professional, scientific and academic circles. This means an encounter between faith, reason and the sciences with a view to developing new approaches and arguments on the issue of credibility, a creative apologetics which would encourage greater openness to the Gospel on the part of all. When certain categories of reason and the sciences are taken up into the proclamation of the message, these categories then become tools of evangelization; water is changed into wine.⁸

Notice that the use of apologetics makes sense within the broader context of “professional, scientific and academic circles.”⁹ At the same time, Francis does not shy away from urging all Christians to be actively engaged in defending the faith at some level: “all Christians,” he observes, are encouraged “to demonstrate [the Christian message] by their words.”¹⁰

No matter the surrounding context of the encounter between believers and their interlocutors, there should be no such thing as an apologetics that merely seeks to “win an argument.” Rather, an authentic witness seeks to meet doubters’ needs with respect: “It is true that in our dealings with the world, we are told to give reasons for our hope, but not as an enemy who critiques and condemns. We are told quite clearly: ‘do so with gentleness and reverence’ (1 Pet 3:15) and ‘if possible, so far as it depends upon you, live peaceably with all’ (Rom 12:18).”¹¹

NATURAL REASON AND SUPERNATURAL FAITH

The three most important themes of Francis's apologetics include the following: an evidential approach to Jesus, the defense of moral truth within the broader context of Catholic social teaching, and the natural knowability of God. When I speak of "Francis's apologetics," I am speaking of his explanation and/or defense of the pillars of faith accessible to natural reason. "Because God is trustworthy," he says, "it is reasonable to have faith in him, to stand fast on his word."¹²

The first theme is centered on the use of evidence for the historical Jesus. If Jesus was "God in the flesh," then his existence, words, and deeds are in principle open to historical investigation. Quite naturally, using the historical approach may—with the guidance of the Holy Spirit—help to produce new converts. Undoubtedly, the evidential approach finds a place in Francis's writings: "The clearest proof of the reliability of Christ's love is to be found in his dying for our sake."¹³ How, then, does one know that God is with us in daily struggles that life presents? One can point to the fact of Jesus' slow torture and execution upon a Roman cross.

Similarly, the post-mortem appearances of Jesus are interpreted as evidence for the emergence of the disciples' faith in the resurrection. In the encyclical *Lumen fidei*, we read:

Christ's death discloses the utter reliability of God's love above all in the light of his resurrection. As the risen one, Christ is the trustworthy witness, deserving of faith (cf. *Rev* 1:5; *Heb* 2:17), and a solid support for our faith. 'If Christ has not been raised, your faith is futile,' says Saint Paul (*1 Cor* 15:17). Had the Father's love not caused Jesus to rise from the dead, had it not been able to restore his body to life, then it would not be a completely reliable love, capable of illuminating also the gloom of death. When Saint Paul describes his new life in Christ, he speaks of 'faith in the Son of God, who loved me and gave himself for me' (*Gal* 2:20). Clearly, this 'faith in the Son of God' means Paul's faith in Jesus, but it also presumes that Jesus himself is worthy of faith, based not only on his having loved us even unto death but also on his divine sonship. Precisely because Jesus is the Son, because he is absolutely grounded in the Father, he was able to conquer death and make the fullness of life shine forth.¹⁴

As with the case for the historicity of the crucifixion, the resurrection of Jesus is presented as a credible event.

The second area centers on the defense of moral norms, especially as it pertains to Catholic social

ethics. Today there is an urgent need to defend human life from conception to natural death, human dignity, natural rights and duties, the welfare of the poor, the legitimate right to private property, the common good, and the integrity of the environment.¹⁵ Although the disintegration of these norms can be traced back to the widespread prevalence of moral relativism,¹⁶ the pope is also concerned with global indifference, the consumer mentality, and other forces that sap the enthusiasm for and defensibility of Christian faith.

Lastly, the pope insists that God the creator can be known by simply exercising human reason and opening ourselves to the world before us. Seeming to echo the *quinque viae* of St. Thomas Aquinas (1225–1274), the pope said: "The universe as a whole, in all its manifold relationships, shows forth the inexhaustible riches of God.... Aquinas wisely noted that multiplicity and variety 'come from the intention of the first agent.'... The sun and the moon, the cedar and the little flower, the eagle and the sparrow: the spectacle of their countless diversities and inequalities tells us that no creature is self-sufficient."¹⁷ Given the implicit nod toward Aquinas's philosophical theology, the pope also affirmed the traditional attributes of God.¹⁸

CREDIBILITY AND HUMAN EXPERIENCE

In the above sections we saw that Francis maintains that the theoretical approach to apologetics has a significant role to play in the life of the Church. However, the primary motive of credibility is found within the experiential realm: "Jesus wants evangelizers who proclaim the good news not only with words, but above all by a life transfigured by God's presence."¹⁹ Further, the "new evangelization calls on every baptized person to be a peacemaker and a credible witness to a reconciled life."²⁰ Simply put, one cannot understand the pope's theology of credibility without highlighting the various existential paths that different individuals take in coming to faith.

For instance, Francis speaks about the witness of hospital workers, counselors, teachers, social activists, and those who care for the elderly. When he thinks of their "witness," he is comforted and sustained in his own efforts to overcome selfishness in the struggle to follow Jesus.²¹ His experience therefore gives him the strength to become a better disciple. Elsewhere, the pope showcases several other experiences that help draw doubters to faith: happiness, beauty, joy, eloquence of life, and enthusiasm.²² Following the teachings of

Vatican II (1962–1965), the pope affirms that the search for unity is understood as a movement in experiential credibility.²³

Moreover, only a Spirit-filled disciple can become an effective witness to Jesus. "The Church," Francis reports, "does not evangelize unless she constantly lets herself be evangelized.... God's word, listened to and celebrated, ... strengthens Christians, enabling them to offer an authentic witness to the Gospel in daily life."²⁴ Or again: "The more Christians immerse themselves in the circle of Christ's light, the more capable they become of understanding and accompanying the path of every man and woman towards God."²⁵

Likewise, the proper response to suffering does not typically lie within the province of natural theology. Rather, we must become compassionate and caring; we must be present with those who suffer and experience injustices: "God does not provide arguments which explain everything; rather, his response is that of an accompanying presence, a history of goodness which touches every story of suffering and opens up a ray of light. In Christ, God himself wishes to share this path with us and to offer us his gaze so that we might see the light within it."²⁶

Perhaps the most important experiential motive of credibility, according to Francis, is found through love.²⁷ The document *Misericordiae vultus* repeatedly testifies to the evidential power of love: "[The Church's] life is authentic and credible only when she becomes a convincing herald of mercy. The Church is called above all to be a credible witness to mercy, professing it and living it as the core of the revelation of Jesus Christ."²⁸ By reaching humanity on these grounds, Love became a tangible and visible reality. Such a concrete reality provides evidence for Love itself: "Love, after all, can never be just an abstraction. By its very nature, it indicates something concrete: intentions, attitudes, and behaviors that are shown in daily living."²⁹

Lastly, because faith makes a moral difference in the lives of believers, it follows that entire cultures affected by Christendom will be positively changed.³⁰ Correlatively, historians recognize that Catholicism was partially responsible for cultivating the necessary intellectual soil in Europe for the sudden emergence of the scientific revolution.³¹ Francis illustrates the point:

Nor is the light of faith, joined to the truth of love, extraneous to the material world, for love is always lived out in body and spirit; the light of faith is an incarnate light radiating from the luminous life of Jesus. It also illumines the material world, trusts its inherent order and knows that it calls us to an ever widening path of

harmony and understanding. The gaze of science thus benefits from faith: faith encourages the scientist to remain constantly open to reality in all its inexhaustible richness. Faith awakens the critical sense by preventing research from being satisfied with its own formulae and helps it to realize that nature is always greater. By stimulating wonder before the profound mystery of creation, faith broadens the horizons of reason to shed greater light on the world which discloses itself to scientific investigation.³²

As Catholicism continues to devolve in different parts of the West, various cultures will in fact become confused about morality in various ways and begin to suffer.³³ Conversely, when Catholic Christianity firmly situates itself in a culture, it becomes easier for doubters to believe in Jesus.

CATHOLICISM AND OTHER RELIGIONS

Pope Francis shows an interest in explicating the uniqueness of Jesus along with maintaining the real possibility of salvation outside the Church. Such a contention is faithful to the teachings of Vatican II.³⁴ There is a substantive difference between knowing Jesus and being cognitively unaware of him. The positive impact of knowing Jesus is life-changing and immediate:

It is impossible to persevere in a fervent evangelization unless we are convinced from personal experience that it is not the same thing to have known Jesus as not to have known him, not the same thing to walk with him as to walk blindly, not the same thing to hear his word as not to know it, and not the same thing to contemplate him, to worship him, to find our peace in him, as not to. It is not the same thing to try to build the world with his Gospel as to try to do so by our own lights. We know well that with Jesus life becomes richer and that with him it is easier to find meaning in everything. This is why we evangelize.³⁵

Not to be overlooked, members of the other world religions can in fact be saved.³⁶ How can this candid admission regarding the salvation of the formal outsiders be reconciled with Jesus' unique status as savior of the world? Further, does interfaith dialogue trump the salvific work of Jesus? The pope answers these questions decisively in *Evangelii gaudium*:

In this dialogue, ever friendly and sincere, attention must always be paid to the essential bond between dialogue and proclamation, which leads the Church to maintain and intensify her relationship with non-Christians. A facile syncretism would ultimately be a

totalitarian gesture on the part of those who would ignore greater values of which they are not the masters. True openness involves remaining steadfast in one's deepest convictions, clear and joyful in one's own identity, while at the same time being "open to understanding those of the other party" and "knowing that dialogue can enrich each side." What is not helpful is a diplomatic openness which says "yes" to everything in order to avoid problems, for this would be a way of deceiving others and denying them the good which we have been given to share generously with others. Evangelization and interreligious dialogue, far from being opposed, mutually support and nourish one another.³⁷

In his language about dialogue and proclamation, Francis picks up the document issued in 1991 by the Pontifical Council for Interreligious Dialogue and the Congregation for the Evangelization of Peoples.³⁸ Continuing the traditional teaching of the Church, evangelization takes precedence over the notion of interfaith dialogue, but Christians can grow in the Lord by listening to the voice of the Spirit which can be found in the lives of religious non-Christians.³⁹

Given the work of the Spirit outside the formal boundaries of the Church, evangelists should seek common ground with the religious others for the mutual benefit of everyone in the dialogue, but the former should help to bring the latter to fulfillment in Jesus Christ. For, everyone has the right to hear and respond to the Good News: "All peoples and cultures have the right to be helped from within their own traditions to enter into the mystery of God's wisdom and to accept the Gospel of Jesus, who is light and transforming strength for all cultures."⁴⁰ Although the "outsiders" should accept the Gospel, the "insiders" recognize that the ongoing attraction of eternal Love calls them to continuously surrender their lives over to Jesus Christ.

CONCLUSION

One of the salient features of Catholic theology is that there are different ways to understand or implement the Gospel in a changing world. There is a legitimate pluralism within the bounds of orthodoxy. Thus, different individuals will call for different responses from the Church. The same must be said for Francis's theology of credibility. He teaches that doubters will be swayed by the way in which Catholics live out their faith. Further, part of "living out the faith" will sometimes consist of developing the skill of apolo-

getics. No matter the circumstances, Catholics must always witness to Jesus with gentleness and respect in dialogue with the world. ✠

ENDNOTES

- I would like to thank Jeff Koloze, R. J. Matava, and Gerald O'Collins, S.J., for proofreading this paper and offering their comments.
- Laudato si*, 121. Cf. *Misericordiae vultus*, 4.
- Lumen fidei*, 37. "Message of Pope Francis for World Mission Day 2013," 1.
- Lumen fidei*, 27, 34, 47.
- Evangelii gaudium*, 61. See also *Laudato si*, 123.
- Lumen fidei*, 36.
- "Message of his Holiness Pope Francis for the Thirty First World Youth Day, 2016," 1.
- Evangelii gaudium*, 132.
- See the contrast in "Message of Pope Francis for the Twenty-Ninth World Youth Day 2014," 4, where the pope talks about a more practical involvement with evangelization: "The Lord wants a poor Church which evangelizes the poor." See also "Message of Pope Francis for World Mission Day 2015," 1.
- Evangelii gaudium*, 258.
- Evangelii gaudium*, 271; cf. 45.
- Lumen fidei*, 23.
- Lumen fidei*, 16; *Misericordiae vultus* 8.
- Lumen fidei*, 17; cf. 30.
- Laudato si*, 3, 65, 90, 93, 157, 201, 217, 232; *Evangelii gaudium*, 65, 213, 263.
- Evangelii gaudium*, 213. *Laudato si*, 213.
- Laudato si*, 86. See also 12, 35, 85, 87, 88, 221.
- Laudatos si*, 73-75, 243, 246.
- Evangelii gaudium*, 259. Cf. 150, 258, 262. Also see "Message of Pope Francis for World Mission Day 2015," 1.
- Evangelii gaudium*, 239.
- Evangelii gaudium*, 76.
- "To All Consecrated on the Occasion of the Year of Consecrated Life," II.1; "Message of Pope Francis for the Twenty-Ninth World Youth Day 2014," 4; *Evangelii gaudium*, 266.
- Evangelii gaudium*, 100, 244; *Lumen fidei*, 47; "Message of Pope Francis for World Mission Day 2015," 1; "To All Consecrated People on the Occasion of the Year of Consecrated Life," I.2.
- Evangelii gaudium*, 174. Cf. 35, 42.
- Lumen fidei*, 35.
- Lumen fidei*, 57.
- Lumen fidei*, 16, 17; *Evangelii gaudium*, 266; *Misericordiae vultus*, 12.
- Misericordiae vultus*, 25. See also *Misericordiae vultus* 9, 10, 14, 17.
- Misericordiae vultus*, 8; cf. 9, 22.
- Lumen fidei*, 21; cf. 53, 55. See also *Evangelii gaudium*, 76.
- Peter E. Hodgson, *Theology and Modern Physics* (Burlington, VT: Ashgate, 2013), 19-40, 207-22.
- Lumen fidei*, 34.
- Lumen fidei*, 55, 57; *Laudato si*, 229.
- Gerald O'Collins, *The Second Vatican Council on Other Religions* (Oxford: Oxford University Press, 2013).
- Evangelii gaudium*, 266.
- Lumen fidei*, 35, 54; *Evangelii gaudium*, 254; *Laudato si*, 221.
- Evangelii gaudium*, 251. See also "Message of Pope Francis for World Mission Day 2014," 1.
- Pontifical Council for Interreligious Dialogue, *Dialogue and Proclamation*, 75, 82.
- Evangelii gaudium*, 254.
- Cf. "Message of Pope Francis for World Mission Day 2015," 1.

H. S. Gerdil. *The Anti-Emile: Reflections on the Theory and Practice of Education against the Principles of Rousseau*. Translation and introductory essay by William A. Frank. South Bend, IN: St. Augustine's Press, 2011.

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

Jean-Jacques Rousseau published *Emile*, his fulsome and flighty disquisition on education, in 1792, the same year that saw the publication of his *Social Contract*. Just one year later, in 1763, *Emile* received a spirited and pointed response in the form of a book entitled *The Anti-Emile: Reflections on the Theory and Practice of Education against the Principles of Rousseau*, written by Fr. Hyacinth Sigismund Gerdil, a member of the Congregation of the Clerics of St. Paul (popularly known as the Barnabites), a large part of whose apostolic activities is devoted to education. Gerdil was born in the Haute Savoie region of France in 1718, and was given the baptismal name of Jean-François. (He took the name of Hyacinth Sigismund when he joined the Barnabites.) After completing his education at the University of Bologna he taught philosophy consecutively at two colleges run by his congregation, and then, in 1749, he became a professor of moral philosophy at the University of Turin, where he was subsequently to occupy the Chair of Moral Theology. He later gave up his university position to accept the invitation of Victor Amadeus, duke of Savoy, to oversee the education of his sons. From 1776, when he was raised to the rank of cardinal bishop by Pope Pius VI, until his death in 1802, he resided in Rome, where he occupied a number of important ecclesiastical positions.

Gerdil was a man of learning, familiarly at home with the classics, and a philosopher of no small distinction. Two of his more important works in the field of philosophy are *Introduction to the Study of Religion* (1755), and *Man Considered in Relation to the State of Nature and the State of Society* (1769), but mention should also be made of important studies which he did of Locke

and of Malebranche.

Gerdil's life and work deserve to be better known today. Most of the particulars regarding the person of Gerdil as just related I gleaned from the introductory essay to *The Anti-Emile*, written by the book's translator, William A. Frank. This essay is a valuable addition to the volume, providing information and analysis that establishes a context within which both Gerdil and his book can be better understood and appreciated.

Gerdil took up pen to do battle with the educational philosophy laid out by Rousseau in *Emile* at the request of a person whose identity remains unknown. Whoever he was, posterity owes him a depth of gratitude; for the book for which he was the instigating agent is a masterfully organized, judiciously focused, and impressively argued critique of the work to which it is responding. Moreover, it is in its own right a substantive work in the philosophy of education, and, indeed, one which in every salient respect is superior to that offered by Rousseau. The general approach which Gerdil takes in his work is especially effective: after identifying specific ideas or attitudes found in *Emile*, and then showing their weaknesses or downright deficiencies, he follows up by offering his own carefully developed counterproposals. The clear superiority of what he has to say about educational theory and practice, in comparison with what Rousseau offers in *Emile*, is accounted for by two very simple facts: it is rational; it is refreshingly consonant with common sense.

While acknowledging Rousseau's literary artistry, and not without admiration, Gerdil astutely recognizes the problems posed by that artistry. It is just because Rousseau is so commanding a writer that he has the capacity to woo unwary readers, who can become so enamored by well-woven words that they are not sufficiently conscious of the often poisonous quality of the ideas those words can so impressively clothe. Gerdil is thus led to ask, "What deadly impressions will not this book make on the minds of those who are so little

protected against its seduction?" (140). "Rousseau," he concedes, "has intermingled among these ideas some useful and illuminating truths, but in his book they only serve to better conceal the deadly poison it contains and to cause it to be swallowed more easily" (141-42). Gerdil has no doubt that the book, along with Rousseau's *The Social Contract*, are frankly revolutionary in their purposes. "The goal of *The Social Contract* is a universal overthrow of civil order; the goal of *Emile* is to prepare souls by means of a total revolution in their mode of thinking." And then, a bit later, he adds some lines that we can see, from our perspective, are not a little prescient: "Our philosopher will not succeed in totally overturning present society, but he will easily inspire that vexation with and aversion for religious and social institutions, which animates him and which breathes forth from all of his writings" (1). These rather harsh words come from a man who saw himself as contending with potentially very dangerous ideas. Interestingly, though, those harsh words, expressed in the beginning paragraphs of the book, do not announce its dominant tone. Gerdil does not assume the role of a ranting alarmist. If anything, *The Anti-Emile* is chiefly characterized by the overall temperate approach it takes to its subject. Throughout the work Gerdil is steadily and calmly focused on ideas, to which he responds with arguments that are consistently lucid and sound. It is worth noting that Rousseau, who could be excessively sensitive to criticism, had positive things to say about *The Anti-Emile*. He tells us it was the only book critical of his ideas that he had read through to the end.

Gerdil spells out in clear terms at the beginning of his work what he intends to accomplish by it. "In challenging the paradoxes advanced by Rousseau," he writes, "we have tried to establish the theory and practice of education on principles that are more solid, more consistent with the spirit of humankind, the peace of families, the tranquility of states, and the general advantage of all men" (2). He informs his readers that the book provides him

with the opportunity “to develop and publish certain ideas that may not be altogether useless for those who are occupied with the education of youth” (2). As is evident by the book itself, he took maximum advantage of that opportunity, and he has given us something which is very far from useless; this work is not to be regarded as simply an historical document whose ideas, though interesting, have no application to our times. *The Anti-Emile* was a book for the eighteenth century; it is also a book for the twenty-first century as well, in that it addresses many issues pertaining to the education of youth which are vitally current. Professor Jude P. Dougherty recognized the timeliness of the book when he reminded us how thoroughly imbued American “progressive” education is with ideas that are traceable back to Rousseau, ideas that were given fuller development in the educational philosophy of John Dewey, the influence of whose thought in bringing about the outcome which is the present sorry state of public education in this country it would be hard to exaggerate.

The book is divided into two parts, the first dealing with the basic principles of the theory of education, and the second with particular educational practices, especially with matters having to do with curriculum. In the first part of the book Gerdil addresses such issues as the overly abstract nature of Rousseau’s theories. *Emile*, the lad who is the subject of Rousseau’s elaborate educational experiment, is, for Gerdil, not quite real. His mentor “intends to form an *abstracted man*, having no relationship to social institutions of any kind” (6, emphasis in the text). In responding to Rousseau’s arrestingly naïve notion that man is by nature innocent but is corrupted by society, Gerdil patiently points out that the case is quite otherwise. Man, burdened as he is by original sin (the reality of which Rousseau chooses to ignore), is a seriously flawed creature, one who, if he allows himself to be guided by his emotions rather than by reason (which is precisely the program Rousseau advocates), will end up being little more

than a savage, and not a noble one. (At one point Gerdil caustically remarks that “one needs to be a savage and all but a cannibal in order to please Rousseau” [127].) To the extent that man becomes civilized in any meaningful sense, it is just to the extent that he is properly “socialized.” Gerdil argues that Rousseau’s “natural man,” that is, “solitary man,” the man who “is entirely for himself,” doing whatever he wants because he finds happiness in his self-sufficiency, following his impulses in the serene confidence that “all the first motions of nature [i.e., the promptings of the basic emotions] are right” (11), is in effect something of a monster, little more than a crude caricature of a human being.

In the second part of the book Gerdil demonstrates that he is not only a thoughtful theoretician with regard to many key aspects of education, but also one who, as an experienced teacher, can talk about practice in very specific and illuminating terms. The voice we hear is that of one whose philosophizing about the subject of education has its roots in quotidian reality. He has worked with flesh-and-blood pupils of various ages, and knows what is peculiar to this or that age in terms of the specific circumstances and problems then to be encountered, and how best to address them. This is in marked contrast to the case with Rousseau, who, in his *Emile*, is dealing with what is no more than a product of his admittedly fertile but nonetheless untrammelled imagination. Gerdil provides an instructive object lesson, in the form of a dialogue between teacher and pupil, whose purpose is to bring home to the child the pertinence of certain basic moral truths, all this in response to how Rousseau goes about it. Among the things he calls to the attention of the child is the need to respect and obey one’s parents, the need to eschew laziness, and the need to be aware of the fact that the man dressed in kingly garments is not necessarily a better man, morally, than the man dressed in rags. His general intent is to show that children must be so taught that they “discern good and evil in particular

actions” (67). It is through concrete examples, making use of objects and situations with which they are familiar and can immediately relate to, that children are effectively taught, not by appealing to abstract principles. In another place Gerdil takes as his point of departure a dialogue between a teacher and child which is found in *Emile*. He provides something like a line-by-line critique of this exchange, showing how it should have been conducted. In all, Gerdil comes across as someone who was a keen student of child psychology.

Gerdil takes spirited exception to Rousseau’s dogmatic assertion that “fables, languages, history, geography, chronology, geometry” are not “proper for children under twelve or fifteen years of age” (67), and devotes a considerable portion of the second part of his book in providing a number of developed responses to the point of view the assertion reflects. As to the matter of fables, such as those famously presented by Aesop, these, Gerdil maintains, should be not only known but also memorized by children, for the valuable moral lessons they can convey. Classical scholar that he was, we are not surprised that Gerdil advocates the importance of studying languages, especially Latin, though he concedes this aspect of a child’s education should not begin until he is eleven or twelve. It is through the study of Latin that a child is brought into contact with antiquity, without a knowledge of which modern culture is seriously impoverished. Whereas Rousseau advocates a study of geometry which is entirely visual, ignoring definitions, problems, and demonstrations, Gerdil counters by arguing that such an approach, first, simply underestimates what a child is capable of learning, but also, more importantly, ends up teaching them something other than geometry. The visual should go hand in hand with definitions, problems, and demonstrations. Rousseau would admit to his educational program only children who are physically in perfect health; sickly children would not be welcome. In response to this attitude Gerdil dryly remarks: “I doubt this passage will do honor to Rousseau’s humanity” (126).

Rousseau’s *Emile* and Gerdil’s *The Anti-Emile* together represent a study in stark contrasts. In *Emile* we have an educational philosophy proposed by a Romantic dreamer; in *The Anti-Emile* we are presented with a philosophy carefully thought out by one who can best be described as a classical realist. Gerdil stands by the great tradition, a tradition going at least as far back as Socrates, and argues on behalf of its perennial relevancy with compelling force. It has to be admitted, given the current state of educational affairs, that of these two philosophies, Rousseau’s has pretty much carried the day. His ideas, as fostered and developed by his devotees over the past two hundred years, enjoy almost scripture-like status in the minds of many of today’s professional educationists. The individualistic, antisocial notion of man, central to Rousseau’s thought, Gerdil saw as the radical distortion that it was, whose consequences, if implemented in educational practice, would prove to be anything but benign. Those who have been persuaded that Rousseau’s view of the world and of man is sound “do not see that the natural man he shows them is the most fictional being that ever existed in the imagination of any philosopher. No one today has ever seen a man wholly free from all social institutions, and no one can say how he would be. All that he delivers on the subject is abstraction, imagination, pure reverie” (139).

The Anti-Emile was published well over 200 years ago, but because of its pertinence to our times it is a happy circumstance that it has now been translated into English and made available to the public by St. Augustine’s Press. The book should be on the reading list of everyone who is involved in education, especially on the elementary level. I have already called attention to the very fine introductory essay that accompanies *The Anti-Emile*; mention should also be made of the book’s endnotes, as well as its index, both of which add considerably to the value of the work.

Christopher Shannon and Christopher O. Blum. *The Past as Pilgrimage: Narrative, Tradition and the Renewal of Catholic History*. Front Royal, VA: Christendom Press, 2014.

Reviewed by John Quinn,
Salve Regina University

Members of the Fellowship of Catholics Scholars will find much to relate to in this work by Catholic historians Christopher Shannon of Christendom College and Christopher Blum of the Augustine Institute. For as the Fellowship was founded by theologians who were troubled by the turn taken by the leading Catholic theological societies, these Catholic historians are troubled by the current state of the historical field and seek to renew it on Catholic principles. Drawing on Alasdair MacIntyre’s writings, Shannon and Blum want Catholic historians to place themselves firmly within the Catholic tradition and support the Church in their work.

The authors argue that Catholic scholars were for many centuries quite adept at using historical narratives to instruct and edify the faithful. As examples, they cite early Christian chronicles of martyrs’ trials and deaths. These accounts accurately related the experiences of these saints while also serving to inspire the Christian community. Shannon and Blum also point to the sermons of Bishop Bossuet, who preached on the life of St. Louis IX at the court of King Louis XIV. In recounting the life of the medieval crusader king, Bossuet at the same time issued a subtle rebuke to Louis XIV, who was living by a much worldlier standard than his pious predecessor.

In Shannon and Blum’s reckoning, the historical profession lost its way in the mid-nineteenth century when it professionalized. Starting with Leopold von Ranke, the German scholar who promised to write history as “it actually was,” professional historians have emphasized scientific approaches and promised objectivity (40). Shannon and Blum note that Ranke was in fact a Lutheran partisan and a German nationalist, and that his work reflected

these biases. Ranke’s successors likewise often had agendas which they veiled under the mantle of “objectivity.” Most saw history not simply as change over time, but as progress toward modernity.

Shannon and Blum are especially frustrated that so many Catholic historians followed these trends in the field. In American Catholic history, they take to task John Tracy Ellis, Jay Dolan, and John McGreevy as promoters of Americanism. While these scholars were professionally trained and ostensibly committed to objectivity, their narratives all emphasize and applaud Catholic assimilation into America’s mainstream. In the 1950s, Ellis was “scolding his fellow Catholics for residual tribalism, parochialism and general intellectual underachievement” (69). Shannon and Blum argue that Ellis’s writing helped pave the way for the Land O’Lakes meeting in 1967, which, in the name of academic freedom, distanced Notre Dame and several other leading Catholic universities from their founding religious communities.

Shannon and Blum do see some signs of hope in the field. One contemporary professional historian who they think puts himself at the service of the Church is Eamon Duffy, an Irish-born chairholder at Cambridge University. In 1992 Duffy published *The Stripping of the Altars*, a meticulously researched study of the English Reformation. In this work, Duffy persuasively argued that there was no groundswell of enthusiasm for Protestantism among the English laity in the early 1500s. Instead, Duffy showed that it was “at first largely a top-down affair, brutally imposed by elites on an unwilling populace strongly attached to their traditional religious practices” (121). Duffy’s book was favorably received by Catholic and non-Catholic reviewers alike, which leads Shannon and Blum to conclude that being a faithful Catholic does not necessarily consign a scholar to the margins of the historical field.

In their conclusion, Shannon and Blum offer additional recommendations for the renewal of the field. First, they note that historians should remember that teaching and reflection are just as

important as writing. When historians do publish, they should use understandable language and shouldn't necessarily seek to appear in academic journals. The authors also stress the importance of historians who operate outside the research universities. People who give tours for the National Parks Service, those who write historical fiction, and those who draft the language for their town's monument are all historians. Shannon and Blum would like to see these many types of Catholic historians come together in a guild that would consider how best to put the historical craft at the service of Christ.

Readers will likely be left with a few questions. For example, how should historians feel about objectivity? Should they strive for it in their work, knowing that they will never be able to reach it because of their own biases? Or is objectivity a quaint and not very helpful concept left to us by Ranke? Secondly, if Catholic historians see themselves in the service of the Church, is there a danger that some may become overzealous and will veer off into apologetics?

Shannon and Blum do not claim to have written the definitive treatise on the relation of Catholicism to historical study. Instead, they have raised important questions, intended to help Catholic historians consider how their scholarship and teaching can build up the Church. *The Past as Pilgrimage* is a scholarly yet very readable work, rich with insights. It deserves a wide readership among thoughtful Catholics.

Kent J. Lasnoski. *Vocation to Virtue: Christian Marriage as a Consecrated Life*. Washington, D.C.: Catholic University of America Press, 2014.

Reviewed by John Gavin, S.J. Department of Religious Studies, College of the Holy Cross.

Who would deny that the vocation of marriage is in crisis? The divorce rate is higher than ever; many young Catholics cohabit with no intention of cel-

ebating the sacrament; "gay marriage" has become an acceptable practice; and even bishops exhibit confusion regarding the meaning of conjugal life. Marriage clearly requires not only a reinvigorated theology, but also a more inspiring program of practice.

Kent Lasnoski, in his *Vocation to Virtue*, has responded to the crisis by drawing upon the Church's tradition and providing it with an exciting practical vision. He argues that marriage is a christomorphic practice of the Church, or a practice of "householding" with God that is rooted in the evangelical virtues. His thesis does not impose a procrustean program that would monasticize marriage, but it does propose that the language of the evangelical virtues, a rule of life, and even a preparation period belong as much to conjugal life as they do to consecrated life.

The contemporary language describing marriage as a "relationship," though an improvement upon the legalistic understanding of the past, has proven inadequate in the contemporary crisis. Drawing instead upon Alisdair MacIntyre's definition of "practice," Lasnoski believes that marriage has the purpose of bringing about "the sanctification of the spouses and all others in their household by the sharing of the whole of life and love," and that this practice finds its social setting principally in the Church. Within the ecclesial environment marriage finds its standards of excellence in Jesus's poverty, chastity, and obedience and its model in the Trinitarian communion.

The theological chapters in this book must overcome some common post-conciliar fears: clericalism and denigration of the laity. Are we not, by inserting marriage into the framework of the evangelical counsels, subordinating marriage to clerical and religious life? Does religious life now become the measure of marriage? Isn't this a return to the "oppressive" theology prior to the Council? Lasnoski overcomes these fears by establishing the evangelical virtues in the shared baptismal consecration of all Christians and the vows of the marriage sacrament. He then offers a close examination of the three

virtues, demonstrating their essential application for Christomorphic practice in both conjugal and religious life. In short, he paints "a picture that imagines conjugal and religious life as intertwined practices of being conformed to Christ the poor, chaste, and obedient bridegroom" (34).

After a recovery of the Augustinian goods of *proles, fides castitatis*, and *sacramentum*, Lasnoski develops the central idea of "householding" in both the consecrated and married life. Inspired especially by Mary Coloe's work on the householding metaphor in the Gospel of John, he demonstrates how the household of God is "an eschatological, mutual indwelling of God and the believer(s); it is present now inasmuch as the believer participates in common in the life of God as Trinity—that is, communion of Persons" (136). Both religious and conjugal life share such complementary features of the householding practice as prayer and ministry; exclusivity and permeability; familiarity and formality, intentionally, and stability. Married couples with their families participate in this common indwelling of God.

The final chapter outlines how the conjugal life can appropriate and live the evangelical virtues in the practice of Christian householding. While the virtue of poverty naturally emerges in a family that sacrifices for children and older generations, some families may even consider living in less affluent neighborhoods to work more directly with the poor. Conjugal chastity could include the practice of Natural Family Planning (NFP), but only if accompanied by Chaste Marital Sexuality (CMS), "a complex set of activities, virtues, and skills necessary to love the spouse as 'man' or 'woman' in all the quotidian interactions and activities of Christian marriage" [191]). Conjugal obedience means developing a shared will in conformity with God's. Couples may also compose a *regula matrimoni* and *ordo* to give shape to the Christian household.

Lasnoski provides a rich theological grounding for marriage that calls for further reflection and evaluation. His suggestions for actual "household-

ing" are truly inspiring and challenging—perhaps too challenging for many couples and families. Yet, in a time when popular culture and government edicts threaten to destroy the vocation of marriage, some form of the "Benedict option" is required: the Christian family will survive—and thrive—by digging deep into the treasures of the Tradition and living the faith in a truly countercultural way. This book calls for a renewal of both conjugal and religious life through a closer formation in Christ, who invites all into the household of his Father.

Antonio Spadaro. *Cybertheology: Thinking Christianity in the Era of the Internet*. Translated by Maria Way. New York: Fordham University Press, 2014. 137 pp.

Reviewed by Steven J. Meyer, University of St. Thomas School of Theology at St. Mary's Seminary, Houston, Texas

The famous phrase of St. Anselm of Canterbury defines the discipline of theology simply as: "faith seeks understanding." In accepting this definition, "cybertheology" is, according to Professor Antonio Spadaro of the Pontifical Gregorian University, who is a Jesuit priest and the chief editor of the Roman Jesuit periodical *La Civiltà Cattolica*, "the intelligence of the faith in the era of the Internet, that is, reflection on the thinkability of the faith in the light of the Web's logic" (16). *Cybertheology: Thinking Christianity in the Era of the Internet* is a collection of exploratory essays reflecting on meaningful questions regarding the impact of the Internet on the content of faith, the act of faith, and areas such as theological anthropology, ecclesiology, liturgy, and sacraments. Spadaro's work is unique in that as a Catholic theologian he engages in a creative reflection on the sources of Catholic faith and mainstream academic sources from sociology, philosophy, and culture which reflect on how the Internet continues to change the way we think, relate,

share, and live. This is not a pastoral type of writing which accepts or fosters the Internet as a communication medium for evangelization. It is work that explores the underlying logic of the creation of the Internet itself and asks how classic theological categories and subjects can be expressed in today's world where the Internet dominates access to information and communication. In other words, it explores how the Internet can be a part of the perennial theological task. The fundamental parts of Spadaro's essays have been engaged by other authors since appearing in articles through *La Civiltà Cattolica* (xii). The book originally appeared in Italian in 2012 as *Cyberteologia. Pensare il cristianesimo al tempo della rete*. Nevertheless, Spadaro wants his essays to be together and in print to serve as a reference point for comparison and future debate. He uses a blog, Facebook, and Twitter to share and allow others collectively to reflect on the ideas found in *Cyberteologia*. His book can also be found in Portuguese and Polish. The English translation by Maria Way, former senior lecturer in media theory at the University of Westminster's School of Media, Art, and Design, is commendable for it is clear and helpfully makes Spadaro's groundbreaking reflections accessible to a wider audience.

In agreement with the author I think we should be asking and thinking about questions such as the following: does the Internet impact the way we think, the way we acquire ideas, and the way we relate to others? If we can affirmatively answer these questions, then how has the Internet rendered the faith which is believed (*fides quae*) more understandable today? How might the Internet affect the future task of theology as we move into the era of "digital natives," or affect those who have never known life without the Internet? Spadaro admits he does not have all the answers. About doing the task of a cybertheology, this last point on self-image seems particularly urgent for Spadaro. He writes, "Reflection is more important than ever, because it is easy to note how the Inter-

net increasingly helps shape people's identities in general and those of the 'digital natives' in particular (Lövhheim and Linderman 2005, 121-37)." A main thread throughout the volume is the exploration of how the Internet impacts the intelligence of faith, *intellectus fidei*. Spadaro writes, "it is important to remember that this book's intent is to unveil scenarios...not to halt at the 'wonders' of technology, but to go to its basis so as to understand how the world is changing and how this change is having an impact on the life of faith. The technologies are new, not simply because they are different from those that preceded them but because they profoundly change the very concept of having an experience" (xii-xiii). The book began as an invitation to address the Italian Bishops Conference on faith and the Internet. Starting with reflections from Benedict XVI, Spadaro explores issues such as the use of analogous Web language in the task of theology among many other themes. My very brief sketch of *Cybertheology* follows.

Chapter 1, "The Internet: Between Theology and Technology," situates theology in the context of now constant possible access to the Internet through advancements in portable devices. Here and throughout the work, Spadaro explores insights from Pierre Lévy, a contemporary French philosopher at the University of Paris. Lévy analyzes how the Internet has caused a reformation in how we think, and he seeks to explore the logic of structure that makes the Web work. Spadaro asks if accessing the Internet as part of daily life cannot but have an effect on how the faith itself is comprehended. Incorporating insights about the Church and communications from Vatican II, Pope Paul VI, and Avery Dulles, Spadaro also engages the work of D. O. Berger, author of a piece titled "Theology in the Brave New World," and conceives of the possibility and types of cybertheology.

Chapter 2, "The Human Being: Decoder and Search Engine for God" begins with some thoughts about how the impact of being constantly plugged

into music changes how we experience routine life. More importantly, Spadaro asks how it might impact the obedience of a faith that comes from hearing. In the chapter he reflects on how through searching the Internet for answers to religious questions, the Gospel is but one piece in a religious supermarket. He explores what searches for God and meaning look like through powerful engines such as Google and Wolfram Alpha.

Chapter 3, “The Mystical and Connective Body,” examines sociological ways that the Internet, in becoming a place for social connections, has changed how and where human relationships are experienced. He weaves this reading with theological sources about relations and ecclesiology posing questions such as: How is the Church a hub for connective experiences? How do connections online impact ecclesiology as it relates on a pastoral level, for example, to Church authority, when the Internet seems to be decentralized?

Chapter 4, “Hacker Ethics and Christian Vision,” discusses the popular image of a hacker as someone who attacks and breaks protected websites, while a fuller understanding of a hacker could include the person with a moral code who serves by creating, building, and innovating the way things are done. A “cracker,” by contrast, is one who breaks and steals things. This chapter provides a creative engagement with the works of Eric Raymond, Stephen Levy, Tom Pittman, Pekka Himanen, and Pierre Lévy, exploring ideas from creative hacker ethics that could converge with Christian and Catholic ethical and theological principles.

Chapter 5, “Liturgy, Sacraments, and Virtual Presence,” begins by asking how the Internet might be changing the way we experience both the sacraments and the liturgy. Spadaro reflects on the works of Marshall and Eric McLuhan, as well as Stephen Rose, Tim Ross, and Walter Benjamin. In one section of the chapter he reflects on the experience of Churches from the popular game *Second Life*. The answer to the opening question has multiple layers because online experience both stimulates and

inhibits “real” personal experience. He lays out theological caution signals such as calling to mind serious objections about the liturgy being reducible to an “information” type of experience, and the sacraments as not being effective (or valid) as virtual experiences.

Chapter 6, “The Technological Tasks of Collective Intelligence,” begins with how the logic of the Web’s collective intelligence has roots in Arabic philosophers, as argued by Pierre Lévy. The implication in Lévy’s thought is that there exists a certain type of theological dimension to the Web’s very structure. Spadaro then takes issue with the Marxist structure inherent in Lévy’s thought and seeks a certain correction in the rest of the chapter. (At this point one might have noticed the frequent mention of Lévy’s name and thought throughout the volume.) In this chapter Spadaro draws heavily from the famous Jesuit priest Pierre Teilhard de Chardin on Chardin’s vision for collective intelligence.

Cybertheology includes footnotes, a works cited section, and an index, but the English text does not have a fuller bibliography. The English edition ends abruptly with chapter 6. It may have been nice for the author to have been asked to make some concluding reflections on the entirety of the volume as the preface supplied the how and why of the volume.

Antonio Spadaro’s *Cybertheology* provides a thought provoking exploration of how the Internet impacts: theological epistemology (chapter 1), finding faith (chapter 2), ecclesiology (chapter 3), theological method (chapter 4), Sacraments and Liturgy (chapter 5), and a theology vis-à-vis the Internet’s own logic (chapter 6). One finds ideas from Flannery O’Connor, Gerard Manley Hopkins, T. S. Eliot, Thomas Aquinas, Karol Wojtyla, and Benedict XVI in an engaging reflection with the current literature addressing how the Internet is changing the way we live. Most especially the volume seems to be a dialogue with the thought of Pierre Lévy. This is uncharted theological territory indeed. These reflections do offer a certain reference point for future stud-

ies, and to this extent the author’s claim for his book is met. We have only just begun living in the era of the Internet, a reality that is part of reality. Practically every student I have met, from the elementary through the graduate university levels, is regularly online. In many cases students need to go online for schoolwork, and once there, who knows what they do and how exactly it affects them. Catholic scholars might consider joining Spadaro in his ongoing exploration of how theology will be done and how faith will be passed on in the era of the Internet.

Michael N. McGregor. *Pure Act (The Uncommon Life of Robert Lax)*. New York: Fordham University Press, 2015. 472 pp. \$30.00 (cloth).

Reviewed by Clara Sarrocco.

In *Pure Act* Michael McGregor has written a book that is part personal narrative and part biography. He spent more than fifteen years visiting Robert Lax and writes about these encounters because they are part of his own personal search. He also spent many years in researching the complicated life of Robert Lax—the sometime poet, sometime mystic, sometime hermit and yet in reality none of these.

Robert Lax was born in Olean, New York, in 1915, and after a peripatetic life returned there to die in 2000. He was born into a Jewish family but converted to Catholicism of sorts in early manhood. However, he always retained his interest in various religions including the mysticism of the Far East and Zen. He was influenced by Mahanambata Brahmachari, whom Lax described as the “first true ‘holy man’” he had ever met.

McGregor writes of the mundane parts of Lax’s family tree going back to his grandparents with an ease of expression that makes the story very readable. The family’s move to New York City and eventually residence in Queens, a New York City suburb, is particularly interesting to those of us who walked those same streets.

Robert Lax was fortunate to have won a scholarship to Columbia University and that became a life-changing experience. At Columbia he met Thomas Merton, who became his longtime friend and confidant. Lax visited Merton at his Gethsemani monastery a number of times, and their correspondence continued until Merton died in a tragic accident in Bangkok, Thailand, in 1968. Ed Rice and Ad Reinhardt were also part of his group as they worked on Columbia University’s literary journal, *The Jester*. They were greatly influenced by Mark Van Doren, Columbia’s renowned professor of English and prolific writer, critic, and poet. In fact, Lax remained a correspondent with Professor Van Doren for the rest of his life. After graduation Lax pursued writing and editing jobs from several publications including *The New Yorker*. Between 1953 and 1967 he worked in conjunction with Ed Rice and Thomas Merton in the founding, editing, and publication of *Jubilee* magazine. It began publication just before the Second Vatican Council and was to act as a venue confronting the issues facing the contemporary Church. Lax’s deep desire was to write the definitive novel and be recognized as an accomplished poet. A great deal of his fame came from the extensive narrative about him that Thomas Merton included in his autobiography, *The Seven Storey Mountain*. Lax always kept extensive journals recording his innermost feelings, his travels, and his poems.

In his search for that illusive “something” Lax became a part of a number of organizations that worked among the poor and downtrodden. This included Dorothy Day’s The Catholic Worker and Baroness Catherine de Hueck’s charity in Harlem called Friendship House, and he even spent some time with Jean Vanier at a Catholic retreat center in the Paris suburb of Soisy-sur-Seine. Vanier eventually would go on to establish L’Arche, a Christian organization that cares for mentally disabled children around the world. Later on Lax visited the L’Arche community in France but did

not remain there for any great length of time. Although he greatly admired their charisms, none of these experiences proved long-lasting for him. In an ultimate romantic gesture, he joined the Cristiani circus, Circus of the Sun, and traveled with them because he felt the circus people were close to the earth but could soar above it. This experience inspired his first book of poems.

After traveling through Europe and staying for short times in Paris, London, and Marseilles, Lax decided that the “Shangri-la” he sought would be found in the Greek islands. With this in mind he took up residence in the various islands but spent his remaining twenty-five years on the island of Patmos—partly because it is associated with St. John the Evangelist. He lived in a very Spartan room, spending his time writing and journaling, ate very little and, in effect, was cared for by the local residents. While he had all the trappings of an eremitical life, he did not shun people. He spent much time talking with the fisherman and sponge divers who lived in the various Greek islands. He sought their company on his daily walks through the village, and because of his avowed pacifism and genial personality he was accepted as an eccentric but likable American. The one exception was during one of the conflicts between Greece and Turkey; because of his enigmatic lifestyle some of the Greek islanders convinced themselves that Lax was a spy.

Robert Lax spent his life in a search of an elusive dream. He wanted to be a hermit but sought people; he wanted to be a poet but wrote simple lines; he wanted to be a mystic but was tied to the world. In the end, his life was all about the journey.

Michael McGregor has written a well-documented story from personal interviews with Robert Lax and from the archives at Columbia University and the College of St. Bonaventure where the Lax journals and writings are stored. He was able to capture Lax’s simplicity and sincerity, and expressed it all with a concern that is obvious.

The Robert Lax of “an uncommon

life” sought but never seemed to find the wisdom of Christ’s message to the Pharisees when they asked him when the kingdom of God would come. He replied: “The coming of the kingdom of God is not something that can be observed, nor will people say, ‘Here it is,’ or ‘There it is,’ because the kingdom of God is in your midst” (Luke 17:20-21).

The Letters of Robert Giroux and Thomas Merton. Edited and annotated by Patrick Samway, S.J. Notre Dame, IN: University of Notre Dame Press, 2016. x + 397 pp.

Reviewed by Jude P. Dougherty
The Catholic University of America

This is not a biography, but the correspondence between these two Columbia University classmates reveals much about the career and character of Merton, from the death of his mother when he was seven years old and his early education in Europe, to the spiritual journey which led him to embrace life as a Cistercian monk in the Abbey of Gethsemani in Kentucky.

Merton, upon graduating from Columbia College in 1938, immediately entered the university’s M.A. program and planned to do a doctorate with a projected dissertation on the poetry of Gerard Manley Hopkins. As a graduate student he attended lectures by Daniel Walsh, an adjunct professor, who introduced him to Thomas Aquinas and to the works of Etienne Gilson and Jacques Maritain. It was Gilson’s *History of Christian Philosophy in the Middle Ages* and Maritan’s *Art and Scholasticism* from which Merton says, “I at once acquired an immense respect for Catholic philosophy and the Catholic faith.” In August he began attending Mass, and in November he was baptized and received his First Communion. Merton taught English composition at Columbia for a semester and later taught English at St. Bonaventure University. At age 26 he entered Our Lady of Gethsemani Abbey and took the

religious name of Maria Louis.

Some years before entering the monastery, Merton, while browsing in Scribner's on New York's Fifth Avenue, encountered his classmate Robert Giroux. Merton had produced several works of fiction and a book of poetry but failed to secure a publisher. By that time Giroux was in the publishing business, editing for Harcourt and Brace. One thing led to another, and Giroux was eventually to publish more than twenty-five titles by Merton.

Merton's extensive correspondence is not the subject of this book, but one can nevertheless catch a glimpse of it from Gireoux's account of his own. Jacques Maritain initiates a lifelong correspondence; Evelyn Waugh writes to praise him for *The Seven Storey Mountain*; Clare Boothe Luce writes to advise him about the intricacies of publishing. For his part, Merton admonishes Alexey Surkov, head of the Soviet Writers Guild, for not supporting Boris Pasternak, author of *Dr. Zhivago*, who was denied publication of the book in Russia. Waugh is effusive in his praise of Merton, "I regard this as a book which may well prove to be of permanent interest in the history of religious experience. No one can afford to neglect this clear account of religious experience." Many did not. The initial run of 600,000 hard back copies of the book was followed by subsequent printings and yet *The New York Times* refused to acknowledge the sales figure and never included it in its bestseller list. Frequent correspondents included Mark Van Doren and Daniel Walsh, Merton's two favorite professors at Columbia. Others, just to indicate the spread, included Martin D'Arcy, Aldous Huxley, Gregory Zilboorg, and Baroness Catherine de Hueck Doherty. A collection of his correspondence with Dom Jean Leclercq, OSB of Clairvaux Abbey, Luxembourg, was eventually published as *Survival or Prophecy*. If I may be permitted a personal note, perhaps as a result of that correspondence, I became a chauffeur for some of Merton's distinguished guests arriving at Cincinnati's International Airport, in addition to those arriving from

Louisville. In the company of some of those guests I became acquainted with Merton, and later when I was charged with organizing Bellarmine College's annual faculty retreats, I held two at Gethsemani with Merton as retreat master and discussion leader. Merton, as a result of his near global correspondence, was extremely well informed about current events. He followed closely the proceedings of Vatican II, in part by reading the reports of Xavier Rynne, which he had me excerpt from *The New Yorker* and bring to him because the Abbey did not subscribe. At the faculty retreats it became clear that Merton and I were frequently at opposite ends of the intellectual spectrum on theological and social issues. I included one of his presentations in a book that I edited and published with Herder of St. Louis under the title, *The Impact of Vatican II*, a presumptive title because the Council had not come to an end.

On one occasion I drove Mark van Doren, who had been lecturing in Louisville, to Gethsemani. Upon our arrival, Merton, who at that time was Master of Novices, invited us to attend a lecture he was about to give to his novices. His gave a marvelous presentation of "John of the Cross's Conception of the Dark Night of the Soul." Van Doren followed with a lecture of his own on the value of a liberal education. This took place a week or so after Charles, Mark's son, sullied the Van Doren name by being exposed as an actor and not the extremely erudite young Columbia University professor he was made out to be on the fraudulent television show, "The \$64,000 Question." Although I had refrained from raising the issue, the first question Merton put to Van Doren was, "How is Charles?" Van Doren replied simply, "Charles has learned very early in life neither to seek fame nor fortune."

It should be noted that at about the same time Merton produced *The Seven Storey Mountain*, a Harvard College student, Avery Dulles, published *A Testimonial to Grace* (Sheed and Ward, 1946). Speaking of his conversion to Catholicism, Dulles wrote, "I found myself avidly reading modern Aristotelians—Catholic authors such as Etienne

Gilson and Jacques Maritain—and adhering to the logic of their doctrine with a fervor I could not capture today." Dulles entered the Church, went on to become a respected systematic theologian, and was made a Cardinal by John Paul II in 2001.

On my last visit to Merton, he handed me a letter he had just received from Jacques Maritain, "Can you make any sense of this?" I could not, in part because Maritain's handwriting in his declining days was nearly unintelligible, and in part because of my inadequate French.

Pierre Manent. *Beyond Radical Secularism: How France and the Christian West Should Respond to the Islamic Challenge*. Translated from the French by Ralph Hancock and Daniel J. Mahoney. South Bend, IN: St. Augustine's Press, 2016. 115 pp.

Reviewed by Jude P. Dougherty.

To say this is a timely book is almost an understatement. In its opening pages, Manent quotes Machiavelli to the effect that states may be slow to address important civic issues, but eventually some extrinsic accident such as war or revolution forces members of a nation to face a disruption to their common way of life. Manent is convinced that France has reached Machiavelli's "deciding moment." In fear or in hope, France, and we might say Europe, is now confronted with what is held in common and what threatens it. The choices French citizens make in the present will haunt the lives of their descendants in the years to come, and will determine as well the future character of France. Apart from the simple demographic composition of its peoples, whether France will remain solvent and prosperous, whether its citizens live in peace and free from violence, whether its laws will be just, whether civil rights and liberties will be respected in word and in deed, becomes an open question.

In the 1960s France, in common with other European nations, expe-

rienced a loosening of the bonds of civility; as Manent puts it, "The delegitimization of collective rules, both political and social." The moral and cultural bonds that once were provided by a common religious perspective were abandoned as a secular humanism took hold. Today European elites see religion merely as individual opinion, something private, a feeling that is incommunicable. The power of this perspective over us, Manent says, is all the greater because it is essentially dictated by our political regime. Accordingly, public institutions are viewed as responsible for guaranteeing the rights of the individual, among which is the right to hold whatever opinion one wants on this world and on the other. Given this enlightened or progressive point of view, religion has no role to play; it is no longer a powerful and significant motivator that it once was but a thing of the past. Thus Europeans were greatly surprised when Islam became a major factor in the political life of the Muslim world. Its intellectual elites had failed to take religion seriously. Today, France in particular is confronted by the fact that a significant percent of its populace chooses to live by the Word of God and under its own law of shari'a. The influence of political Islam cannot be dismissed. Where Christianity is concerned religion's loss of collective influence is a verifiable fact, but not where Islam is concerned.

Manent points out that the old inhabitants of Europe never had the chance to accept or reject Muslim immigration. It was never put to a vote but dictated by policy formulated in Brussels and the other capitals of European nations. Once the massive influx of Muslim immigrants occurred, the official interpretation of rights dictated that Muslims be considered exclusively as rights-bearing individuals and not as bearers of a collective form or, one might say, alien culture. Before it is too late, Manent writes, "It is important to take advantage of the time allotted to us to make a transition from a passive coexistence between a society of rights and an Islamic morality to the active participation of both groups in a com-

mon political form that can only be the national form." He then asks, "Where can a nation so weakened [by liberal ideology] find the political and spiritual means to rise to the heights of such an unexpected and arduous task?"

The rights of the individual have been radically separated, he maintains, from the rights of the citizen. We are the first people in history to give over all elements of social life to the unlimited sovereignty of the individual. It is impossible to live together without having something in common. What may provide the common bond?

In bringing his discourse to a conclusion, Manent writes, "Although Catholics seem to be pushed ever further towards the periphery of public life, the Church as a spiritual domain is at the center of the Western configuration. Her responsibility is proportional to this centrality which in truth is inseparable from her identity. Just as the universal church seems alone up to the task of holding together the configuration that joins her with Judaism, Islam, evangelical Protestantism, and the doctrine of human rights, the Church in France, that is, French Catholics, have a special responsibility for the common good in which the other spiritual forces of our country participate."

Muslims for their part must recognize that they have entered a domain that they did not create. They are not entering an empty space, but will have to find their place in a world that is spiritually and culturally different. The French who accept them have in principle the spiritual and intellectual resources to be generous without being complacent. The immigrant who is accepted must want to participate actively in the life of a political body that does not and will not belong to the *umma*. In short, for peaceful coexistence, Muslim immigrants have the obligation to accept a degree of separation from the *umma*. A rational solution to be sure, but given the objectives of a militant Islam, is it possible?

John P. Safranek. *The Myth of Liberalism*. Washington, D.C.: The Catholic University of America Press, 2015. xvii + 270 pp.

Reviewed by Jude P. Dougherty.

This is a timely volume by an author who is both a practicing physician and a philosopher. Drawing upon both his professional experience and the perennial philosophy of Aristotle and Aquinas, he challenges the liberal zeitgeist which prevails in centers, high and low, throughout the Western world.

In the opening pages of his book, Safranek shows clearly that liberalism is not a coherent philosophy but is, rather, "a collection of causes marshalled under the banner of personal liberty by powerful social and political interests." Liberty, equality, right, and nearly all other ephemeral liberal values, he says, are indistinguishable from desires. Personal freedom seems to be the paramount goal of modern liberal programs, notwithstanding its conflict with other liberal values.

Modernity may have begun with Machiavelli, but it is John Locke (1632-1704) who may be the real source of modern political liberalism. Putting Locke aside, Safranek focuses on liberalism's later development in the thought of Thomas Hobbes and his mythical "war against all," in Jeremy Bentham's utilitarianism, and in John Stuart Mill's dismissal of God as the source of a natural order. Subsequent chapters are devoted to the liberal's understanding of "autonomy," "equality," and "rights."

Safranek finds his own perspective articulated in Aristotle's *Politics* and *Nicomachean Ethics*, as developed by Aquinas and his modern disciples. This premodern tradition is premised on the mind's ability to grasp certain basic truths about nature, human nature, and morality. "What we take to be the Western moral tradition," he says, "is a distillation of centuries of reflection on human nature and human good." Most contemporary philosophers seem oblivious of that accomplishment, and take no note of the premodern philosophers and theologians who have

magisterially addressed the issues presently consuming the liberal's attention. Unwittingly or perhaps deliberately, modern philosophers cast aside the accumulated wisdom of the Western world. Absent a God-given natural order to which one can appeal, a new order has to be created.

"By banishing talk of God and discussions of virtue and the good life from the public square, liberals have reshaped much of the Western world." In doing so the liberal zeitgeist has deprived society of accepted moral standards and robbed citizens, especially the undisciplined, of the beneficial influence of time-sanctioned virtues, notably that of self-restraint. By destroying the higher things of life as traditionally understood, liberalism tragically undermines marriage and, by extension, family life, which Safranek calls "the nursery of moral, intellectual, and spiritual virtue." In destroying the old, the contemporary liberal mind provides no guide with respect to happiness and self-fulfillment. "The contemporary liberal mind is sterile."

In the present situation, Safranek holds out hope that a new aristocracy is in the making. The new aristocracy will emerge from intact families, in contrast to the historical aristocracies as found in Europe. The new aristocracy will not be based on property or material well-being but on virtuous family relationships. Children born into virtuous families will have an advantage from birth. Self-restraint will come naturally to them, enabling them to advance in the sciences and arts, and eventually into positions of leadership, when the liberal mind has exhausted its inherited moral capital.

John Safranek has widely researched his topic. Over the last half-century he has tracked the liberal mind in its many variations. Perhaps no one has shown better its influence on the judiciary. By surveying decades of U.S. Supreme Court decisions, Safranek can illustrate how many a malevolent idea has leapt off the page of a liberal text and become the law of the land. Examples come easily to him given his extensive research and decades of reflection, but

these are too numerous to recount here.

This is seen especially in those chapters where Safranek is focused on "rights" and "equality." In talking about equal justice under the law, he reminds the reader that the principle of justice is usually formulated as "giving everyone his due." Yet, if recognizing that some may be due more than others violates the principle of equal distribution, what follows? The question of equality cannot be answered until a standard of comparison is stipulated. People are equally human, rational, and desirous, but unequal in many respects, such as intelligence, health, sex, mobility, ability to bear children, not to mention personal moral and intellectual virtue. In this context Safranek provides an insightful critique of the liberal's use of ambiguous language. Terms such as "liberty," "equal respect," "public reason," and "equal opportunity," which people may think they understand and find unobjectionable, are turned around and given different meanings in support of the liberal objectives. He is particularly critical of John Rawls's transformation of language in *A Theory of Justice* (1971) and *Political Liberalism* (1993).

While the book is replete with information that has policy implications, Safranek leaves the drawing of those implications to the common sense of the reader.

Charles Malik. *The Systems of Whitehead's Metaphysics*. Edited with an introduction by Habib Malik and Tony E. Nasrallah. Lebanon: Notre Dame Louaize, 2016. 436 pp.

Reviewed by Jude P. Dougherty.

In the summer of 1937, having just received his doctorate at Harvard University under the direction of Professors Ernest Hocking and John Wild, Charles Malik devoted his energies to the production of the present volume, drawing upon his doctoral dissertation with a view to publishing it separately. Failing to get the support of Wild and others, he could not find a publisher. There may have been

other reasons for their decline of support. Both Hocking and Wild were realists in the Aristotelian tradition, and one would think should naturally have supported Malik. In fact, Malik produced one of the clearest expositions of Whitehead's philosophy that one is likely to find. His criticism is based on principles he derived from his subsequent study of Heidegger, who was persona non grata at Harvard in those pre-war days. It could have been that after he had studied with Heidegger, Malik gave the impression that he outgrew Whitehead. Malik put his critical study aside and entered the world of diplomacy and politics.

Charles Malik first encountered Whitehead when, as a college student at the American University in Lebanon, he was encouraged to read *Science and the Modern World* (1925). *Religion in the Making* was published a year later, and *Process and Reality* appeared in 1929, and Malik pursued the study of those as well. After further reading he became convinced that he had to study with Alfred North Whitehead and wrote to him an admiring letter. Whitehead responded with an invitation to Harvard and told Malik that if he could pay his first semester's tuition, he would evaluate his work and subsequently advise him. Whitehead was appreciative of Malik's "stellar" work, and upon his recommendation the philosophy department gave Malik full support for his doctoral studies.

This was an exciting period in the history of science given the recent promulgation of Einstein's theory of relativity and Bohr's quantum mechanics. The central concepts in science at the time were space, time, evolution, principles of thought and being, natural law, causal law, induction, potentiality, and relativity.

Malik begins his discussion of Whitehead by stating, "My express purpose in this work is to endeavor to understand and set forth the unity of Whitehead's philosophy." That was not an easy task, given that one had first to master Whitehead's unique language. What was one to make of difficult terms such as "sensa," "relatum," "con-

nectivity," "concrecence," "conceptual prehension," let alone "God's primordial nature," and "God's subsequent nature," or "To be is either to be an actuality or some feature of the essence of actuality"?

Confronted with Whitehead's egocentric philosophy, Malik became convinced that "[t]o speak of a philosopher's system is to mean that he is on the whole true to himself. . . . His beliefs articulate themselves into some unity no matter how rich his interests may be." Malik came to believe that the central message of Whitehead's philosophy of science is that "unless philosophy confronts science with a fully worked out picture of the concrete constitution of actuality, science does not really know the truths that it expresses, nor can it criticize its basic principles and presuppositions in a way that enables it to progress."

It must be noted that, while Whitehead's philosophy is replete with insight, the problems which he discusses are not new. The scholastics had previously addressed most of them with greater clarity and precision. By contrast, Whitehead's language is poetic and fanciful. John Wild, although he was co-director of Malik's dissertation, admitted that he was not interested in Whitehead's metaphysics. Whitehead's process philosophy and its influence on process theology still attracts. The Metaphysical Society of America at its annual meetings sets aside, apart from its main program, a session for the meeting of The Society for the Study of Process Philosophies, on the assumption that few have mastered Whitehead's technical vocabulary.

Entering diplomatic service, Malik first served as the Lebanese representative to the United Nations, and then as the president of the Commission on Human Rights and president of the United Nations General Assembly. He was responsible for the drafting and adoption of the 1948 Universal Declaration of Human Rights. After that service he returned to Lebanon, serving as dean and professor at the American University in his native country. Forced to flee Lebanon because of the civil war

at the time, he returned to the United States, where he lectured extensively on human rights and other sensitive political subjects. He held professorships at Harvard, American University in Washington, Dartmouth, Notre Dame, and at the University of Waterloo (Canada). His last official post was at The Catholic University of America, where he served as the Jacques Maritain Distinguished Professor of Moral and Political Philosophy. His son, Habib, also served briefly there as an adjunct professor in the School of Philosophy.*

Meriol Trevor. *Shadows and Images: A Novel*. San Francisco: Ignatius, 2012. 278 pp.

Reviewed by Jeff Koloze, Ph.D. (English), Walsh University

Although Meriol Trevor is extolled by Leonie Caldecott in the Foreword as "one of the most prolific Catholic writers of the twentieth century" (vii), it is difficult to see how *Shadows and Images*, her the fourth novel, originally published in 1960, qualifies as an item of literary merit. Perhaps her writing style improved as the years progressed. In this instance, however, the intention of promoting any author who bears the adjective "Catholic," particularly if he or she is an orthodox one, must be balanced by an honest appreciation of the work's merits and deficiencies.

The adventures of the ostensibly major characters, Clem (Clemency) Burnet and Augustine Firlie, are weak. The characters fall in love, elope, have children, live moral lives, and lead others to social justice (Augustine controls an iron foundry, a convenient circumstance to demonstrate how utterly good he is vis-à-vis Catholic social justice doctrines). Above all, they find solace in their Catholic faith. Is there anything wrong with such events in a plot? Definitely not, but real life is not so saccharine, and this novel suffers immeasurably from a lack of two essential elements of narrative writing which would have transformed such

false sweetness into a literary work with some vigor.

The purpose of the novel seems to be the promotion of the author's real hero of the British Catholic community in the nineteenth century—and of the main characters, which may account for why they seem to function as foils for him—John Henry Cardinal Newman, whose life ranged the gamut of human emotions: love for humanity, diligence in one's scholarship, and satisfaction in that work—all three items tempered by humiliation and disappointment. However, reading Trevor's two-volume biography of Newman may be better than this tedious fictionalized account of his life. Clem's and Augustine's actions do not seem as important as those of Newman. Newman's tracts written when he was still an Anglican, his conversion to Catholicism, the libel suit brought against him by Giacinto Achilli, the years of lack of recognition for his work, and the eventual succession to the cardinalate rank higher than the more mundane activities of Clem and Augustine, who are not the typical struggling young couple, for Augustine has wealth from his iron foundry and family heritage.

Thus, while it has expositions and crises, the novel lacks interesting developments of the various crises, probably because the narrative tells more than shows the actions of the characters. Moreover, is there a climax, an essential crisis after which the novel ineluctably goes one way or another in the denouement? There must be, but the reader is hard pressed to determine one, since many of the various crises are related weakly and without the force required for such a turning point in the narrative. Absent these features, the denouement is ambiguous.

Of course, some passages are colorful in their imagery and deep in their mysticism. Similes range from a simple expression that Clem's feelings raged "like the grey sea thundering round her head" (12) to complex mixed metaphors: "It was a clear day at the end of summer, the seas were peacock green, bursting in showers of snow on the long rock teeth of the lonely

BOOK REVIEWS

Atlantic shore” (34). Often, specific passages delve into deep Catholic appreciation of the natural world in communion with human life. The personification of Newman’s chapel is described thus: “It was very quiet in there, as if the stone were thinking” (36). Sometimes, the communion of nature and human life is at odds: “September began; evenings and early mornings grew sharp and misty, but the days were still warm and the sky seemed a deeper clearer blue. Clem felt very happy, she did not know why” (42). Trevor has an affection for the bells of Oxford churches, which, in accord with the mood of the time being depicted, can ring ominously “like souls haunting the damp evening of the town” (102–03) and at other times ring as warnings of the end-times: “Then all the bells came in with their resonant tongues, reminding the ancient city of the passing of time, the hundreds of hundreds of hours gone by, time like a wind blowing over the stones, leaving walls and towers stand-

ing but carrying away men like leaves, turning even their delicate bones to dust” (46).

Furthermore, these natural evocations mirror the human characters’ own spiritual journeys, as the following episode illustrates. Although the conception and birth of Clem’s firstborn is succinctly related as “Clem’s second winter in Rome ended, to her great happiness, with the discovery that she was going to have a child” (122), a page later the reader is shocked to read the extreme reductionism of “They did all they could but the fever ran high. On the fourth night he died” (123). Despite this bare narrative, the reader is presented with a reflection that only a more mature Clem would come to realize: “The pain of the loss of her child did not lessen, but became intense with meaning, a meaning she felt but could not quite grasp with her reason. The place of the skull was here, but it was a tomb opening; Christ was on the everlasting tree and it was flowering” (135). Such spiritual profundity makes the

passages concerning the child’s death worthwhile reading.

Finally, there is one obvious didactic function of the novel which a Marxist, New Historicist, or reader-response literary critic would especially enjoy. If Trevor thought that the vicissitudes of Newman’s life were what are now called “teachable moments” for her 1960 audience, then how much more relevant are those teachable moments for orthodox Catholics in the twenty-first century? If Catholics were victims of Victorian bigotry, they are now victims of the subjectivist relativism dominating the academy, government, and popular culture which view Catholics and their beliefs as enemies to intellectual freedom, the power of the state, and to sexual gratification as illustrated in expansive Internet and entertainment media. In this respect, Trevor’s work can lead one to appreciate Newman’s life and work as a means for the New Evangelization of the pagan culture in which Catholicism has the great fortune to exist.

BOOKS RECEIVED

If you would like to receive one of these books to review for the Quarterly, please email Elizabeth Shaw – shaw@cua.edu

Cattaneo (Arturo), et al., eds. *Married Priests? 30 Crucial Questions About Celibacy*.

Deely (John) interpretive arrangement *Tractatus de Signis: The Semiotic of John Poinset*.

Dougherty (Jude P.) *The Nature of Scientific Explanation*.

D’Souza CSB (Mario O.) with Seilings (Jonathan R.) eds. *Being in the World: A Quotable Maritain Reader*.

George (Francis Cardinal). *A Godly Humanism: Clarifying the Hope That Lies Within*.

Gribble CSC (Richard). *Navy Priest: The Life of Captain Jake Laboon, SJ*.

Hanser (Richard). *A Noble Treason: The Story of Sophie Scholl & the White Rose Revolt Against Hitler*.

Howard (Thomas). *Hallowed Be This House: Finding Signs of Heaven in Your Home*.

Kelly SJ (Patrick), ed. *Catholic Perspectives: Youth Sport & Spirituality*.

Kidder (Annemarie S.) translator of Karl Rahner, S.J.’s *Ignatius of Loyola Speaks*.

Leiva-Merikakis (Erasmus). *Fire of Mercy, Heart of the Word: Vol III: Meditations on the Gospel According to Saint Matthew*.

Maglio (Robert). *Facing Up to Real Doctrinal Difference: How Some Thought-Motifs From Derrida Can Nourish the Catholic Buddhist Encounter*.

Monti (James). *A Sense of the Sacred: Roman Catholic Worship in the Middle Ages*.

Odozor CSSp (Paulinus Ikechukwu). *Morality Truly Christian Truly African: Foundational, Methodological, and Theological Considerations*.

Sloan (Phillip R.), McKenny (Gerald), Eggleston (Kathleen), eds. *Darwin in the Twenty-First Century: Nature+Humanity+God+Evolutionary Theory*.

Smith (Wolfgang). *Science & Myth: With a Response to Stephen Hawking’s The Grand Design*.

Smith (Wolfgang). *Theistic Evolution: The Teilhardian Heresy*.

Walz (Matthew D.) translator of St. Anselm of Canterbury’s *Proslogion: including Gaunilo’s Objections and Anselm’s Replies*.

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Senator Moynihan's Use of the Catholic Principle of Subsidiarity

One of the many merits of Professor Greg Weiner's book, *American Burke: The Uncommon Liberalism of Daniel Patrick Moynihan*, is to bring out Moynihan's embrace of the Catholic principle of subsidiarity. Two illuminating descriptions of subsidiarity in papal writings are found in Pius XI's encyclical letter *Quadragesimo anno* (1931), and in an address of Pope Benedict XVI to the Pontifical Academy of Social Sciences. Moynihan referred to Pius XI's encyclical in several of his speeches and articles; he had passed away by the time of Pope Benedict's address.

In that address to the Pontifical Academy on May 3, 2008, Pope Benedict discusses four fundamental principles of Catholic social teaching: the dignity of the human person, the common good, subsidiarity, and solidarity. The pope first describes subsidiarity as "the coordination of society's activities in a way that supports the internal life of the local communities." More clearly, Benedict says that people act upon the principle of subsidiarity "by promoting family life, voluntary associations, private initiative, and a public order that facilitates the healthy functioning of society's most basic communities." When the public authorities allow and encourage society's mediating institutions, "they leave space for individual responsibility, and initiative, but most importantly, they leave room for love," which itself is an act of love. This is a point first made by Pope Benedict in his third encyclical, *Caritas in veritate*.

To affirm that respecting the principle of subsidiarity is a way of loving one's neighbor is a brilliant observation that I have not previously found in the body of Catholic social doctrine (*CIV*, no. 57). In other words, people practice charity by observing the principle of subsidiarity, since they show respect for the dignity of others by putting them in a better position to practice charity themselves. Since charity is the "heart of what it means to be a human being" (*CIV*, no. 57), subsidiarity is much more than a principle of government: putting people in a position to love is an eminent contribution to the integral development of persons and, thus, to their salvation.

To state in another way what Benedict is getting

at, subsidiarity requires participation and community at all levels of society. This means that larger entities should not usurp the role of smaller ones. For example, the federal government should not usurp the role of the states, and government itself should not do what families, other mediating institutions, and individuals are able to accomplish on their own. Subsidiarity also means that the larger entities should give aid (*subsidium*) to the smaller ones and to individuals, so that the latter can fulfill their responsibilities more easily, including the practice of charity. Pope Benedict's theological perspective on the implementation of subsidiarity as a way of promoting love among a nation's citizens need not be recognized or even valued by government authorities. Good things like love will necessarily happen when they promote subsidiarity.

Professor Weiner begins his account of Moynihan's embrace of subsidiarity by noting that he is committed both to "vibrant public authority" and to the preservation of the private sphere (5) where entities like the family, the church, and voluntary associations can thrive. Weiner goes on to explain throughout his book Moynihan's acute sense of the limits of government, to complement his appreciation of government intervention on the national level in selected areas. For example, in his 1969 commencement address at the University of Notre Dame, Moynihan said: "What is it that government cannot provide? It cannot provide values to persons who have none, or who have lost those they had. It cannot provide meaning to life. It cannot provide inner peace.... In particular, government cannot cope with the crisis in values that is sweeping the Western world" (16). The intermediary institutions in the private sphere must do the things that government cannot do if any nation is going to thrive, and they need to be assisted and supported by the government. A fortiori the government should not hinder the intermediate institutions from doing their job or take away their responsibility for problems they can address and solve. "Thus, for instance, a problem that could be resolved by the family should be so resolved in order to strengthen the family" (23-24). When the family is strengthened, its members give and receive help; indeed, they give and receive love.

It is actually in the interest of the state to support the great work able to be done by the family and other social institutions, but in the early 1960s American liberalism, according to Moynihan, went in a different direction. In a 1975 speech Moynihan deplored the fact that by 1963 liberals were encouraging the state "to take over more and more individual functions, and the highest levels of the state were encouraged to take over more and more of the functions of the 'lesser and subordinate levels'" (24). Moynihan considered this new orientation to be a serious mistake because, in his mind, "much of the strength of democratic society" lies in the flourishing of the intermediary associations (27).

Because he wanted Catholic parochial schools to flourish, he favored allowing parents to deduct the cost of tuition from their taxes. Moynihan believed that subsidiary organizations curbed the evil of statism and provided an antidote to alienation and anomie, that is to say, personal unrest caused by lack of purpose or ideals. As Moynihan put it, "A society suffused with the alienation of many its members is a society that courts—if not totalitarianism, at least statism" (29). By statism Moynihan seems to mean substantial state control over a nation's social and economic affairs with little or no reliance on the little platoons.

Statism is not a danger in a nation that implements and respects the Catholic principle of subsidiarity, which Moynihan describes as the Catholic counterpart to American federalism and to what Edmund Burke meant by "the small platoons of life" (36). Weiner further explains Moynihan's understanding of subsidiarity by taking note of his conviction that the "national government should not assume responsibilities that states could carry out. It should not usurp communities, and communities should, in turn, preserve space for 'the family itself, the neighborhood, the church, nonprofits, and the like'" (31).

Of all society's communities Moynihan considered the family the most important. "When the family collapses," he wrote, "it is the children that are usually damaged. When it happens on a massive scale the community itself is crippled" (35). Moynihan received confirmation of his convictions about the importance of the family in the studies of sociologist James Coleman, who found that "family stability was the single most important factor, more important than schools, in determining educational success" (61). Moynihan also learned from Coleman that government could not expect to make up for the deficiencies in the family by simply increasing per-pupil expenditures. Moynihan

believed that government might be able to do something, but certainly not take the place of dysfunctional families.

Another indication of the family's importance for the well-being of individuals stood out clearly in the controversial Moynihan Report of 1965, *The Negro Family: The Case for National Action*. Even though he blamed the problems of the African-American family on "the legacy of slavery as well as ongoing discrimination," Moynihan was criticized for the rest of his life for having "blamed the victim" (67). He first distinguished a growing, successful, middle-class group of families from those in the lower class suffering multiple disadvantages. In the disadvantaged families Moynihan found an increasing number of nonmarital births, absent fathers, and a minority of African American children growing up to the age of 18 with both parents at home. In a 1995 interview Moynihan would say: "There is a nice African saying that it takes a whole village to raise a child. But it does at least take one male present" (69). Moynihan wanted the family problems of African Americans addressed so that they would have a chance of achieving equality with white Americans.

Why is the stable, healthy family the fundamental building block of society? Moynihan answers, "The family is the basic social unit of American life; it is the basic socializing unit. By and large, adult conduct in society is learned as a child" (68). Moynihan's own studies taught him that higher incomes "are unmistakably associated with greater family stability" (74). Flourishing families, then, definitely promote equality among Americans. In the later years of his career Moynihan began to note that what he said about the African-American family in the 1960s was now true of all families in the United States. In an address at the National Press Club on July 23, 1987, he noted the great change that had taken place in the American family between 1960 and 1980. "Every other marriage ends in divorce. Every other child ends up in a single parent family. One child in five... never knows a two-parent family. And how have we responded? We haven't." Moynihan could have added absent fathers, poverty, and poor educational outcomes in unstable families. Things are worse today and we still haven't really done anything effective.

Moynihan lamented the fact that American liberalism, under the influence of its laissez-faire ancestry, did not sufficiently appreciate the importance of the little platoons, but favored neutralizing the buffer zones between the state and the individual, including the family. Both Tocqueville and Moynihan had observed that this

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primary emphasis on the poles of the state and the individual put the latter at a disadvantage, leaving him “degraded, subservient, and enervated as a result” (73). To prevent this from happening was why both Tocqueville and Moynihan insisted on supporting the mediating institutions or little platoons.

Professor Weiner begins his concluding remarks on subsidiarity with this observation: “Subsidiarity reflects the clearest and most persistent influence of Catholic thought on Moynihan’s politics” (134). For subsidiary institutions to thrive they need support from government, not just to be let alone. Families need help not just from government but from other subsidiary institutions, such as neighborhoods, churches, schools, and voluntary organizations. For Moynihan the implementation of subsidiarity is the “the key to social health” and an obstacle to the establishment of totalitarian regimes (135). Furthermore, membership in subsidiary institutions promotes an interest in the common good of the wider society. As Burke put it, “To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were)

of public affections. It is the first link in the series by which we proceed towards a love to our country and to mankind” (137). Finally, Moynihan supported subsidiarity as a way to uphold the dignity of the human person. Professor Weiner explains, “The relevant principle is moral: decisions should be made as close as possible to the individual in order to preserve the initiative, identity, and dignity of individuals and the institutions that surround them—all values Moynihan associated with liberalism” (138).

My last comment is that Moynihan’s account of subsidiarity, as explained by Professor Weiner, is the same as that of Pope Benedict XVI, except for the latter’s point that the implementation of subsidiarity makes room for love. As we just saw, however, this thought is present to some degree in Moynihan’s account of subsidiarity. I should add, finally, that Weiner’s book is great source to learn about the Catholic principle of subsidiarity.” ✠

J. Brian Benestad
Editor