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Published in John Witte, Jr. and Frank S. Alexander, eds., *Modern Christian Teachings on Law, Politics, Society, and Human Nature* (New York: Columbia University Press, 2006), 1-23

## **Introduction to *Modern Christian Teachings on Law, Politics, and Human Nature***

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### **Abstract**

*Modern Catholics, Protestants, and Orthodox Christians alike produced original teachings on law and politics, constructing them on distinct theological foundations, particularly their theology of human nature. But, until recent years, these Christian legal teachings did not penetrate Western legal education, given its pervasive devotion to legal positivism. With the rise of interdisciplinary legal studies, however, these teachings have begun to influence the law both in the West and beyond. This chapter introduces a score of major modern Christian thinkers whose views on law, politics, and human nature deserve closer study by jurists and theologians alike.*

**Keywords:** Oliver Wendell Holmes, Jr.; Legal Positivism; Interdisciplinary Legal Studies; Law and Religion; Grant Gilmore; Christianity; Protestantism; Orthodox Christianity; Catholicism; Modernity; Legal Teachings and Social Teachings; Secularism; Globalization; Natural Law Theory

### **The Context**

"The better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb.... In Hell there will be nothing but law, and due process will be meticulously observed."<sup>1</sup>

So wrote Grant Gilmore to conclude his *Ages of American Law*. Gilmore crafted this catchy couplet to capture the pessimistic view of law,

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<sup>1</sup> Grant Gilmore, *The Ages of American Law* (New Haven/London: Yale University Press, 1977), pp. 110-11.

politics, and society made popular by the American jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. (1841-1935). Contrary to the conventional portrait of Holmes as the sage and sartorial “Yankee from Olympus,”<sup>2</sup> Gilmore portrayed Holmes as a “harsh and cruel” man, chastened and charred by the savagery of the American Civil War and by the gluttony of the Industrial Revolution. These experiences, Gilmore argued, had made Holmes “a bitter and lifelong pessimist who saw in the course of human life nothing but a continuing struggle in which the rich and powerful impose their will on the poor and the weak.”<sup>3</sup> The cruel excesses of the Bolshevik Revolution, World War I, and the Great Depression in the first third of the twentieth century only confirmed Holmes in his pessimism that human life was “without values.”<sup>4</sup>

This bleak view of human nature shaped Holmes’ bleak view of law, politics, and society. Holmes regarded law principally as a barrier against human depravity -- a means to check the proverbial “bad man” against his worst instincts and to make him pay dearly if he yielded to temptation.<sup>5</sup> Holmes also regarded law as a buffer against human suffering -- a means to protect the vulnerable against the worst exploitation by corporations, churches, and Congress. For Holmes, there was no higher law in heaven to guide the law below. There was no path of legal virtue up which a man should go. For Holmes, the “path of the law” cut a horizontal line between heaven and hell, between human sanctity and depravity. Law served to keep society and its members from sliding into the abyss of hell. But it could do nothing to guide its members in their ascent to heaven.

Holmes was the “high priest” of a new “age of faith” in American law, Gilmore wrote with intended irony, that replaced an earlier era dominated by the church and the clergy.<sup>6</sup> The confession of this new age of faith was that America was a land “ruled by laws, not by men.” Its catechism was the new case law method of the law school classroom. Its canon was the new concordance of legal codes, amply augmented by New Deal legislation. Its church was the common law court where the rituals of judicial formalism and due process would yield legal truth. Its church council was the Supreme Court which now issued opinions with as much dogmatic confidence as the divines of Nicea, Augsburg, and Trent.

This new age of faith in American law was in part the product of a new faith in the positivist theory of knowledge that swept over America in the later nineteenth and twentieth centuries, eclipsing earlier theories of knowledge that gave religion and the church a more prominent place. In law, the turn to positivism proceeded in two stages. The first stage was scientific. Inspired by

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<sup>2</sup> Catherine Drinker Bowen, *Yankee From Olympus: Justice Holmes and His Family* (Boston: Little, Brown, and Company, 1944).

<sup>3</sup> Gilmore, *Ages of American Law*, 48-56, 110, 147 n.12.

<sup>4</sup> Albert W. Alschuler, *Life Without Values: The Life, Work and Legacy of Justice Holmes* (Chicago: University of Chicago Press, 2000).

<sup>5</sup> Oliver Wendell Holmes, Jr., *The Path of the Law* [1897], in id., *Collected Legal Papers* (New York: Harcourt, Brace and Howe, 1920), p. 170.

<sup>6</sup> Gilmore, *Ages of American Law*, 41-67

the successes of the early modern scientific revolution--from Copernicus to Newton--eighteenth-century European and nineteenth-century American jurists set out to create a method of law that was every bit as scientific and rigorous as that of the new mathematics and the new physics. This scientific movement in law was not merely an exercise in professional rivalry. It was an earnest attempt to show that law had an autonomous place in the cadre of positive sciences, that it could not and should not be subsumed by theology, politics, philosophy, or economics. In testimony to this claim, jurists in this period poured forth a staggering number of new legal codes, new constitutions, new legal encyclopedias, dictionaries, textbooks, and other legal syntheses that still grace, and bow, the shelves of our law libraries.<sup>7</sup>

The second stage of the positivist turn in law was philosophical. A new movement--known variously as legal positivism, legal formalism, and analytical jurisprudence--sought to reduce the subject matter of law to its most essential core. If physics could be reduced to "matter in motion" and biology to "survival of the fittest," then surely law and legal study could be reduced to a core subject as well. The formula was produced in the mid-nineteenth century--most famously by John Austin in England and Christopher Columbus Langdell in America: Law is simply the concrete rules and procedures posited by the sovereign, and enforced by the courts. Many other institutions and practices might be normative and important for social coherence and political concordance. But they are not law. They are the subjects of theology, ethics, economics, politics, psychology, sociology, anthropology, and other humane disciplines. They stand beyond the province of jurisprudence properly determined.<sup>8</sup>

This positivist theory of law, which swept over American universities from the 1890s onward, rendered legal study increasingly narrow and insular. Law was simply the sovereign's rules. Legal study was simply the analysis of the rules that were posited, and their application in particular cases. Why these rules were posited, whether their positing was for good or ill, how these rules affected society, politics, or morality were not relevant questions for legal study. By the early twentieth century, it was rather common to read in legal textbooks that law is an autonomous science, that its doctrines, language, and methods are self-sufficient, that its study is self-contained.<sup>9</sup> It was rather common to think that law

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<sup>7</sup> I. Bernard Cohen, *Revolution in Science* (Cambridge, MA/London: Harvard University Press, 1985); Donald R. Kelly, *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge/London: Harvard University Press, 1990).

<sup>8</sup> See esp. John Austin, *The Province of Jurisprudence Determined, Being the First of a Series of Lectures on Jurisprudence, or, The Philosophy of Positive Law*, 2d. ed., 3 vols. (London: J. Murray 1861-63); Christopher Columbus Langdell, *A Selection of Cases on the Law of Contracts*, 2d ed. (Boston: Little, Brown, and Company, 1879), preface; id., "Harvard Celebration Speeches," *Law Quarterly Review* 3 (1887), 123.

<sup>9</sup> See, e.g., John Wigmore, "Nova Methodus Discendae Docendaeque Jurisprudentiae," *Harvard Law Review* 30 (1917): 812; Oliver Wendell Holmes, Jr., "Learning and Science," and "Law in Science, Science in Law," in id., *Collected Legal Papers*, 139, 231; Robert Stevens, *Law School: Legal Education in America from the 1850s to 1980s* (Chapel Hill/London: University of North Carolina Press, 1983).

has the engines of change within itself; that, through its own design and dynamic, law marches teleologically through time "from trespass to case to negligence, from contract to quasi-contract to implied warranty."<sup>10</sup>

Holmes was an early champion of this positivist theory of law and legal development. He rebuked more traditional views with a series of famous aphorisms that are still often quoted today. Against those who insisted that the legal tradition was more than simply a product of pragmatic evolution, he wrote: "The life of the law is not logic but experience."<sup>11</sup> Against those who appealed to a higher natural law to guide the positive law of the state, Holmes cracked: "There is no such brooding omnipresence in the sky."<sup>12</sup> Against those who argued for a more principled jurisprudence, Holmes retorted: "General principles do not decide concrete cases."<sup>13</sup> Against those who insisted that law needed basic moral premises to be cogent, Holmes mused: "I should be glad if we could get rid of the whole moral phraseology which I think has tended to distort the law. In fact even in the domain of morals I think that it would be a gain, at least for the educated, to get rid of the word and notion [of] Sin."<sup>14</sup>

Despite its new prominence in the early twentieth century, American legal positivism was not without its ample detractors. Already in the 1920s and 1930s, sociologists of law argued that the nature and purpose of law and politics cannot be understood without reference to the spirit of a people and their times--of a *Volksgeist* und *Zeitgeist* as their German counterparts put it. The legal realist movement of the 1930s and 1940s used the new insights of psychology and anthropology to cast doubt on the immutability and ineluctability of judicial reasoning. The revived natural law movement of the 1940s and 1950s saw in the horrors of Hitler's Holocaust and Stalin's gulags, the perils of constructing a legal system without transcendent checks and balances. The international human rights movement of the 1950s and 1960s pressed the law to address more directly the sources and sanctions of civil, political, social, cultural, and economic rights. Marxist, feminist, and neo-Kantian movements in the 1960s and 1970s used linguistic and structural critiques to expose the fallacies and false equalities of legal and political doctrines. Watergate and other political scandals in the 1970s and 1980s highlighted the need for a more comprehensive understanding of legal ethics and political accountability.

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<sup>10</sup> Barbara Shapiro, "Law and Science in Seventeenth-Century England," *Stanford Law Review* 21 (1969), 724, 728.

<sup>11</sup> Oliver Wendell Holmes, Jr., *The Common Law* (Boston: Little, Brown and Company, 1881), p. 1.

<sup>12</sup> Michael H. Hoffheimer, *Justice Holmes and the Natural Law* (New York: Garland Publishing, 1992).

<sup>13</sup> need cite

<sup>14</sup> Letter to Sir Frederick Pollock (May 30, 1927): in *Holmes-Pollock Letters, The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock 1874-1932*, ed. Mark DeWolfe Howe, 2 vols. (Cambridge, MA: Harvard University Press 1941), vol. 2, pp. \_\_.

By the early 1970s, the confluence of these and other movements had exposed the limitations of a positivist definition of law standing alone. Leading jurists of the day--Lon Fuller, Jerome Hall, Karl Llewellyn, Harold Berman, and others--were pressing for a broader understanding and definition of law.<sup>15</sup> Of course, they said in concurrence with legal positivists, law consists of rules--the black letter rules of contracts, torts, property, corporations, and sundry other familiar subjects. Of course, law draws to itself a distinctive legal science, an "artificial reason," as Sir Edward Coke once put it.<sup>16</sup> But law is much more than the rules of the state and how we apply and analyze them. Law is also the social activity by which certain norms are formulated by legitimate authorities and actualized by persons subject to those authorities. The process of legal formulation involves legislating, adjudicating, administering, and other conduct by legitimate officials. The process of legal actualization involves obeying, negotiating, litigating, and other conduct by legal subjects. Law is rules, plus the social and political processes of formulating, enforcing, and responding to those rules.<sup>17</sup> Numerous other institutions, besides the state, are involved in this legal functionality. The rules, customs, and processes of churches, colleges, corporations, clubs, charities, and other non-state associations are just as much a part of a society's legal system as those of the state. Numerous other norms, besides legal rules, are involved in the legal process. Rule and obedience, authority and liberty are exercised out of a complex blend of concerns and conditions-- class, gender, persuasion, piety, charisma, clemency, courage, moderation, temperance, force, faith, and more.

Legal positivism could not, by itself, come to terms with law understood in this broader sense. In the last third of the twentieth century, American jurists thus began to (re)turn with increasing alacrity to the methods and insights of other disciplines to enhance their formulations. This was the birthing process of the modern movement of interdisciplinary legal study. The movement was born to enhance the province and purview of legal study, to refigure the roots and routes of legal analysis, to render more holistic and realistic our appreciation of law in community, in context, in concert with politics, social sciences, and other disciplines.<sup>18</sup> In the 1970s, a number of interdisciplinary approaches began to enter the mainstream of American legal education--combining legal study with

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<sup>15</sup> See esp. Karl Llewellyn, *Jurisprudence* (Chicago: University of Chicago Press, 1962); Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven, CT: Yale University Press, 1964); Jerome Hall, *Studies in Jurisprudence and Criminal Theory* (New York: Oceana Publishers, 1958); id., *Foundations of Jurisprudence* (Indianapolis: Bobbs-Merrill, 1973); Harold J. Berman, *The Interaction of Law and Religion* (Nashville, TN: Abingdon Press, 1974).

<sup>16</sup> Anthony Lewis, "Sir Edward Coke (1552-1633): His Theory of 'Artificial Reason' as a Context for Modern Basic Legal Theory," *Law Quarterly Review* 84 (1968), 330.

<sup>17</sup> See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), pp. 4-5; Jerome Hall, *Comparative Law and Social Theory* (Baton Rouge, LA: Louisiana State University Press, 1963), pp. 78-82

<sup>18</sup> See, e.g., Richard A. Posner, "The Present Situation in Legal Scholarship," *Yale Law Journal* 90 (1981), 1113; Robert C. Clark, "The Interdisciplinary Study of Legal Evolution," *Yale Law Journal* 90 (1981), 1238; Symposium, "American Legal Scholarship: Directions and Dilemmas," *Journal of Legal Education* 33 (1983): 403.

the study of philosophy, economics, medicine, politics, and sociology. In the 1980s and 1990s, new interdisciplinary legal approaches were born in rapid succession--the study of law coupled with the study of anthropology, literature, environmental science, urban studies, women's studies, gay-lesbian studies, and African-American studies. And, importantly for our purposes, in these last two decades, the study of law was also recombined with the study of religion, including Christianity.

### **The Content**

In this context, it is no surprise that modern Western Christian teachings of law, politics, and society have, until recently, been largely lost on the academy.<sup>19</sup> To be sure, the valuable contributions of a few Christian lights of the twentieth century--Reinhold Niebuhr, Jacques Maritain, and Martin Luther King, Jr. especially--have long been closely studied. And, to be sure, medieval and early modern Christian influences on the Western legal tradition were recognized. But the prevailing assumption of most scholars has been that, for good or ill, the historical contributions of Christianity to our understanding of law, politics, and society were gradually eclipsed in the modern period. Outside of specialty discussions of natural law and church-state relations, it has been widely assumed, modern Christianity has had little constructive or original to say.

The premise of this volume and its companion is that modern Christianity did have a great deal to say about law, politics, and society, and that its teachings can still have a salutary influence today, in the West and well beyond. To be sure, many quarters of modern Christianity did become theologically anemic, ethically compromised, and jurisprudentially barren. But in each generation, we submit, strong schools of Christian legal, political, and social teaching remained, each grounded in a rich and nuanced Christian theology -- particularly a theology of human nature or, more technically, a theological anthropology. Not surprisingly, given the prominence of legal positivism, most of the best such teaching emerged outside of the legal profession--in seminaries and church councils, among philosophers and ethicists, on soap boxes and in prison cells, in intellectual isolation if not outright exile. But by word, by deed, and by declaration, modern Christians addressed the cardinal issues of law, politics, and society drawing on a rich theology of human nature.

These two volumes sample these teachings and map their insights for the most pressing issues of our day. Such issues include topics that are familiar to scholars of law, politics, and society whatever their persuasion: the nature and purpose of law and authority, the mandate and limits of rule and obedience, the rights and duties of officials and subjects, the care and nurture of the needy and

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<sup>19</sup> For a notable recent exception, see Michael W. McConnell, Robert F. Cochran, Jr., and Angela C. Carmella, *Christian Perspectives on Legal Thought* (New Haven/London: Yale University Press, 2000) with essays by 28 distinguished American law professors, several of whom appear in this volume as well.

innocent, the rights and wrongs of war and violence, the separation and cooperation of church and state, the sources and sanctions of legal reasoning, among others. Such issues also include questions that are more specifically Christian in accent but no less important for our understanding of law, politics, and society: Are persons fundamentally good or evil? Is human dignity essentially rational or relational? Is law inherently coercive or liberating? Is law a stairway to heaven or a fence against hell? Did government predate or postdate the fall into sin? Should authorities only proscribe vices or also prescribe virtues? Is the state a divine or a popular sovereign? Are social institutions fundamentally hierarchical or egalitarian in internal structure and external relations? Are they rooted in creation or custom, covenant or contract? What is justice, and what must a Christian do in its absence?

We have prepared two companion volumes on twenty leading modern Catholic, Protestant, and Orthodox Christians who addressed these types of questions. Gathered for analysis herein are modern theologians, philosophers, ethicists, jurists, statesmen, and churchmen who spoke to many issues of law, politics, and society on the strength of their theological anthropology -- or spoke to one or two issues with particular acuity and originality. This volume provides a set of freshly commissioned analytical essays on these twenty Christian figures. The companion volume is an anthology of illustrative primary writings by each of these same figures. Twin forewords and twin afterwords to this volume, prepared by four scholarly giants in the field of law and religion today, offer inspiration, instruction, and illustration on how this material can be fruitfully used by the twenty-first-century reader.

First, these volumes focus on *modern* Christian teachings on law, politics, society, and human nature. *Modern, modernism, and modernity* are highly contested labels these days--not least within Christian churches, where the terms have often been associated with dangerous liberal tendencies. We are using the term *modern* non-technically. We are focused principally on twentieth-century Christianity, reaching back into the later nineteenth century to understand movements that culminated in the twentieth century and affected Christianity. The era under purview includes the Reconstruction era after the American Civil War, the later Industrial Revolution, the Bolshevik Revolution and the emergence of socialism, two world wars, the Holocaust and the Stalinist purges, the modern human rights revolution, the Great Depression and the rise of the Western welfare state, the technological revolution and the emergence of globalization, among other movements. These modern moments and movements had monumental, and sometimes devastating, impacts on modern Christianity.

To be sure, many of these twentieth-century movements were continuous with earlier movements that are often also described as "modern." Among these are the great revolutions of the West: the Glorious Revolution of England (1689), the American Revolution (1776), and the French Revolutions of 1789 and 1848. Important also was the scientific revolution in the seventeenth and eighteenth

centuries and the later rise of what Max Weber called technical rationality and the bureaucratization of the state and society. And, most important of all was the eighteenth- and nineteenth-century Enlightenment in Europe and North America, with its new secular theology of individualism, rationalism, and nationalism that often challenged core Christian beliefs. To Enlightenment exponents, the individual was no longer viewed primarily as a sinner seeking salvation in the life hereafter. Every individual was created equal in virtue and dignity, vested with inherent rights of life, liberty, and property, and capable of choosing his own means and measures of happiness. Reason was no longer the handmaiden of revelation, rational disputation no longer subordinate to homiletic declaration. The rational process, conducted privately by each person, and collectively in the open marketplace of ideas, was considered a sufficient source of private morality and public law. The nation-state was no longer identified with a national church or a divinely blessed covenant people. The nation-state was to be glorified in its own right. Its constitutions and laws were sacred texts reflecting the morals and mores of the collective national culture. Its officials were secular priests, representing the sovereignty and will of the people.

The introductory chapters to the Catholic, Protestant, and Orthodox sections of the volume address some of these earlier phases of the modern age, but not all of them, and not in a depth that will satisfy specialists. It would take a set of volumes considerably heftier than these, to take full account of these earlier modern movements and their impact on Christian teachings on law, politics, and society. It is the later modern period that is less known, and it is that period with which these volumes are principally occupied.

Second, we have deliberately used the term *teachings*, rather than theories, theologies, or other formal labels to describe what modern Christianity has offered to law, politics, and society. In part, this is to underscore that the call to “teach” is what all Christians, despite their vast denominational differences, have in common. Christ’s last words to his disciples, after all, were: “Go ye, therefore, and make disciples of all nations ... *teaching* them to observe all that I have commanded you.”<sup>20</sup> In part this is to recognize that the terms “social teachings”--as well as “political teachings,” “moral teachings” and “legal teachings”--have become terms of art in current scholarship. Particularly in the Catholic and Protestant worlds, “social teaching” has now become short-hand for a fantastic range of speculation on issues of law, politics, society, and morality.<sup>21</sup> And, in part, we use the term *teachings* to underscore that modern Christians have contributed to our understanding of law, politics, and society both by word and by deed, by books and by speeches, by brilliant writings and by sacrificial acts. It would be foolish to dismiss the novel teachings of Susan Anthony and

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<sup>20</sup> Matthew 28:20.

<sup>21</sup> See, e.g., Ernst Troeltsch, *The Social Teachings of the Christian Churches*, trans. Olive Wyon with an introduction by H. Richard Niebuhr, 2 vols. (Chicago: University of Chicago Press, 1981) and review of later literature in John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge/New York: Cambridge University Press, 2002).

Dorothy Day just because they had thin resumes. It would be equally foolish not to draw lessons from the martyrdom of Mother Maria and Dietrich Bonhoeffer just because they left their papers in disarray.

Third, we have divided these twenty figures into Catholic, Protestant, and Orthodox Christian groups, even while recognizing that some of these figures were more ecumenically minded than others. We have included an introduction to each of these three traditions to contextualize and connect the studies of the individual figures that are included. We have arranged the chapters on these figures more or less chronologically for each tradition. We have assigned varying word limits to the chapters and selections for each figure in accordance with their relative importance for the themes of these volumes.

Fourth, with respect to the Catholic tradition, we have blended episcopal and lay voices from both sides of the Atlantic. Popes Leo XIII, John XXIII, and John Paul II offered the most original and enduring contributions among modern popes, though Pope Pius XII was critical as well. Leo XIII led the revival and reconstruction of the thought of thirteenth-century sage Thomas Aquinas. He applied this “neo-Thomism,” as it was called, to the formulation of several of the Church’s core “social teachings,” not least a theory of social institutions that would later ripen into subsidiarity doctrine, and a theory of labor that would later form the backbone of the Church’s stand for social, cultural, and economic rights. John XXIII was the architect of the Second Vatican Council (1962-1965) with its transforming vision of religious liberty, human dignity, and democracy and with its deliberate agenda to modernize the Catholic Church’s political platforms and social teachings. John Paul II, who faced the ravages of both Nazi occupation and the Communist takeover of his native Poland, was a fierce champion of democratization and human rights in the first years of his pontificate, as well as an active sponsor of rapprochement among Catholics, Protestants, and Jews and of revitalization of the Church’s canon law. In recent years, he has become an equally fierce critic of the growing secularization of society, liberalization of theology, and exploitation of human nature. These latter concerns have led the Church leadership to new (and sometimes controversial) interpretations of the Church’s earlier “social teachings.”

The French philosopher Jacques Maritain and the American theologian John Courtney Murray were among the most original and influential of the many European and American Catholic writers in the mid-twentieth century. Maritain combined neo-Thomism and French existentialism into an intricate new theory of natural law, natural rights, human dignity, equality, and fraternity, which inspired the Universal Declaration of Human Rights (1948). Murray combined neo-Thomism and American democratic theory into a powerful new argument for natural law, human dignity, religious liberty, church-state relations, and social organization. Both theories were initially controversial. Murray was censored for a time by the Church; Maritain was blistered by his reviewers. But these two figures, and the many scholars whom they influenced, laid much of the

foundation for the Second Vatican Council's declaration on human dignity and religious freedom, and the Church's emerging global advocacy of human rights and democratization.

Both American political activist Dorothy Day and Latin American liberation theologian Gustavo Gutiérrez represent important new strains of social and political critique and activism within modern Catholicism. Day defied state and church authorities alike in her relentless crusade to protect the rights of workers and the poor, and to protest warfare, grounding her work in a robust theology of personalism. Gutiérrez combined some of the teachings of Vatican II and Marxism into a searing critique of global capitalism and its devastating impact on the poor and on the underdeveloped world. Both Day and Gutiérrez adduced Scripture above all to press for a preferential option for the poor, the needy, and the vulnerable. While both these figures have been controversial, and both drew episcopal censure, they have helped to illustrate, if not inspire, many new forms of social and political activism among Catholics worldwide.

Fifth, the Protestant tradition, with its hundreds of independent denominations who share only the Bible as their common authority, did not lend itself to easy illustration. We present Abraham Kuyper and Karl Barth as two strong and independent voices who addressed, sometimes defined, many of the main themes of law, politics, society, and human nature that have occupied many modern Protestants. Kuyper, though not so well known today, was something of the Leo XIII of his day. Kuyper called for a return to the cardinal teachings of the sixteenth-century Protestant Reformation, and developed a comprehensive Reformed theory of human nature and human knowledge. He also developed an important new "sphere sovereignty" theory of liberty, democracy, and social institutions, which would become a Protestant analogue, if not answer, to Catholic subsidiarity theory. If Kuyper was the Leo of modern Protestantism, Barth was the Maritain. This brilliant Swiss theologian produced the most comprehensive Protestant dogmatic system of the twentieth century, centered on the Bible and on Christ. Many theories of law, politics, and society were embedded in his massive writings, not least Barth's famous critique of theories of natural law and natural rights, the source of a strong anti-naturalist and anti-rights tendency among many later Protestants. Most memorable of all was Barth's leadership in crafting the Barmen Declaration of 1934 that denounced the emerging laws and policies of Adolf Hitler and the German Nazi Party.

German theologian Dietrich Bonhoeffer knew first-hand about Nazi belligerence, for he was killed in a concentration camp for conspiring to assassinate Hitler. Bonhoeffer's decision to join this conspiracy had required a complex rethinking of his own Lutheran tradition of political ethics and Christian discipleship, and of the proper relations of the church and its members to a world that had abandoned reason and religion in pursuit of tribalism and totalitarianism. Bonhoeffer's American contemporary Reinhold Niebuhr saw some of these same lusts for power and self-interest in modern states and corporations alike.

Building on the classic Protestant doctrine of total depravity, Niebuhr developed an applied theology of Christian realism that prized democratic government but with strong checks and balances, that protected human rights but informed by moral duties, and that championed racial equality and economic justice.

We have included Susan B. Anthony, a freethinking Quaker, as an early exemplar of an important tendency of modern American Protestants to counsel both legal disobedience and legal reform at once on selected issues. Today, these Protestant political preoccupations include abortion, same-sex marriage, and religion in public schools. For Anthony, the cardinal issue was women's rights. Using basic biblical texts as her guide, Anthony worked relentlessly to affect many legal reforms in Congress and the states, not least passage of the Nineteenth Amendment to the United States Constitution, the world's first modern constitutional guarantee of a woman's right to vote.

Both Martin Luther King, Jr. and William Stringfellow later led comparable movements for racial and economic justice, although they both grounded their advocacy more deeply in traditional biblical warrants and allied themselves more closely with the church. King was "America's Amos" who used pulpit, pamphlet, and political platform alike to lead America to greater racial justice, including passage of the Civil Rights Act of 1964. When he faced political opposition and repression, King also developed a novel theology of nonviolent resistance to authority. William Stringfellow spent much of his career representing the interests of the poor and needy in Harlem as well as those who protested America's war policy, appearing in several sensational cases. He grounded his work in a novel Protestant theory of law and Gospel. The Mennonite theologian, John Howard Yoder, likewise pressed for social and economic justice and democratic virtues, on the strength of a classic Anabaptist biblicism and pacifism coupled with a new appreciation for natural law, human rights, and democratization.

Sixth, we have thought it imperative to give ample time and space in the volumes to the Eastern Orthodox tradition. Many leading Orthodox lights dealt with fundamental questions of law, politics, society and human nature with novel insight, often giving a distinct reading and rendering of the biblical, apostolic, and patristic sources. Moreover, the Orthodox Church has immense spiritual resources and experiences whose implications are only now beginning to be seen. These spiritual resources lie, in part, in Orthodox worship -- the passion of the liturgy, the pathos of the icons, the power of spiritual silence. They lie, in part, in Orthodox church life -- the distinct balancing between hierarchy and congregationalism through autocephaly, between uniform worship and liturgical freedom through alternative vernacular rites, between community and individuality through a Trinitarian communalism, centered on the parish, on the extended family, on the wizened grandmother (the "babushka" in Russia). And these spiritual resources lie, in part, in the massive martyrdom of millions of Orthodox faithful in the last century -- whether suffered by Russian Orthodox

under the Communist Party, by Greek and Armenian Orthodox under Turkish and Iranian radicals, by Middle Eastern Copts at the hands of religious extremists, or by North African Orthodox under all manner of fascist autocrats.<sup>22</sup>

These deep spiritual resources of the Orthodox Church have no exact parallels in modern Catholicism and Protestantism, and most of their implications for law, politics, and society have still to be drawn out. It would be wise to hear what an ancient church, newly charred and chastened by decades of oppression and martyrdom, considers essential to the regime of human rights. It would be enlightening to watch how ancient Orthodox communities, still largely centered on the parish and the family, will reconstruct Christian theories of society. It would be instructive to listen how a tradition, that still celebrates spiritual silence as its highest virtue, might recast the meaning of freedom of speech and expression. And it would be illuminating to feel how a people, that has long cherished and celebrated the role of the woman -- the wizened babushka of the home, the faithful remnant in the parish pews, the living icon of the Assumption of the Mother of God -- might elaborate the meaning of gender equality.

To illustrate the potential of some of these Orthodox resources, and the rich theological anthropologies that Orthodox has already produced, we have selected three key Russian Orthodox scholars -- Soloviev, Berdyaev, and Lossky. Each of these figures interacted with several Western Christian thinkers. Each challenged the (increasingly compromised) Russian Orthodox authorities of their day, even while channeling the best theology and jurisprudence of the Russian Orthodox tradition into fundamentally new directions. Vladimir Soloviev, a jurist, was the first modern Russian to work out an intricate Orthodox philosophy of law that grounded law and political order in morality, and that anchored morality directed in a Christian theology of salvation. Soloviev also challenged the traditional Orthodox theology of theocracy, which tied church, state, and nation into an organic whole, and laid some of the foundations for a new theory of social pluralism. Nicholas Berdyaev, a theologian, worked out a complex new theology of human nature anchored in an ethic of creation, redemption, and law. He also crafted an original theory of human dignity and salvation that he tied to the Orthodox theology of theosis. Vladimir Lossky, a philosopher, drew from several earlier church fathers and mystics a brilliant new theory of human dignity, freedom, and discipline anchored in the Orthodox doctrine of the Trinity. He also challenged the politically compromised church and its socially anemic members to reclaim both their freedoms and their duties to discharge divinely appointed tasks. The Romanian theologian Dumitru Stăniloae drew from some of these same church fathers and mystics a comparable theory of the meaning of human freedom and sinfulness and the symphony of natural and supernatural sources of law and authority. Unlike Lossky, Stăniloae supported Romanian ethnic nationalism and had little say to

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<sup>22</sup> See James H. Billington, "Orthodox Christianity and the Russian Transformation," in *Proselytism and Orthodoxy in Russia: The New War for Souls*, ed. John Witte, Jr. and Michael Bourdeaux (Maryknoll, NY: Orbis Books, 1999), p. 51; id., "The Case for Orthodoxy," *The New Republic* (May 30, 1994), 24.

about the political compromises of the Romanian Orthodox Church during the period of Communism.

We have also included a chapter on the Russian nun and social reformer Mother Maria Skobtsova, whose thought and example evoke images of both Dorothy Day and Dietrich Bonhoeffer. Maria, who was exiled in Paris, worked tirelessly in the hostels feeding the poor and needy, even while developing a rich theology of incarnational living and sacramental care, and a harsh critique of some of the socially avertive tendencies of many monastics. Her work during the Nazi occupation of Paris brought her to the attention of the Gestapo, who condemned her to death in a concentration camp.

The biographies of some of these twenty figures are as edifying as their writings, and the chapters that follow spend time recounting them. Fifteen of these figures served, at least for a time, as university professors of theology, philosophy, ethics, history, or law. Ten served in traditional church offices: three as popes (Leo XIII, John XXIII, and John Paul II), five as pastors (Gutiérrez, Barth, Bonhoeffer, Niebuhr, and King), two as monastics (Maria and Murray). Two served in political office -- Kuyper as Dutch Prime Minister, Maritain as French ambassador. One served as a lawyer (Stringfellow). One was active as a political advisor (Niebuhr). Eight were stirred to radical social or political activism (Gutiérrez, Day, Barth, Bonhoeffer, Niebuhr, King, Stringfellow, and Maria). Four were censured by church authorities (Anthony, Day, Murray, and Gutiérrez). Three were exiled from their homeland (Berdyayev, Lossky, and Maria). Two were removed from their professorships (Bonhoeffer and Stăniloae). Nine were indicted or imprisoned by state authorities (Anthony, Day, Bonhoeffer, King, Stringfellow, Soloviev, Berdyayev, Maria, and Stăniloae). Two faced brutal and lengthy political imprisonment (Soloviev and Stăniloae). Two were murdered in concentration camps (Bonhoeffer and Maria). One fell to an assassin's bullet (King).

The diversity of these biographies underscores an important criterion of selection that we have used in assembling these two volumes. The twenty figures included herein are intended to be small points on a large canvas, not entries on an exhaustive roll of modern Christian teachers of law, society, and politics. We present them as illustrations of different venues, vectors, and visions of what a Christian understanding of law, politics, and society entails. Some of these figures were lone voices. Others attracted huge throngs of allies and disciples, many of whom make no appearance in these pages. Moreover, we have not included figures who are still alive and well today--including several contributors to this volume--whose work will likely shape Christian teachings on law, politics, and society in the twenty-first century.

Many readers will thus look in vain in these volumes for some of their favorite authors. Missing from this collection are some of our favorites who did or do speak to issues of law, politics, and society with a distinctly Christian

understanding of human nature. These include Urs von Balthasar, John Finnis, Joseph Fuchs, Mary Ann Glendon, Germain Grisez, Etienne Gilson, Bernard Longeran, Pius XII, Karl Rahner, Heinrich Rommen, Thomas Schaeffer, and Yves Simon, among Catholics; Emil Brunner, Herman Dooyeweerd, Johannes Heckel, Carl Henry, Karl Holl, Wolfgang Huber, Richard Niebuhr, Oliver O'Donovan, Wolfhart Pannenburg, Paul Ramsey, Walter Rauschenbusch, and Rudolph Sohm, among Protestants; John Erickson, Pavel Florensky, Georges Florovsky, John Meyendorff, Christoph Yannoros, among Orthodox. Every reader will have a list of favorites beyond those included in these pages. The greatest compliment that could be made to this book is that it stimulates the production of many other and better studies of the scores of other modern Christian thinkers who deserve analysis.

### **The Challenge**

This last point invites a few final reflections on some of the main challenges that remain--beyond the formidable task of filling in the vast canvas of modern Christian teachings on law, politics, society, and human nature.

One challenge is to trace the roots of these modern Christian teachings into the earlier modern period of the seventeenth through early nineteenth centuries. Scholars have written a great deal about patristic, scholastic, early Protestant, and post-Tridentine Catholic contributions to law, politics, and society. But many of the best accounts of the history of Christian legal, political, and social thought stop in 1625. That was the year that the father of international law, Hugo Grotius, uttered the impious hypothesis that law, politics, and society would continue even if "we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him."<sup>23</sup> While many subsequent writers conceded Grotius' hypothesis, and embarked on the great secular projects of the Enlightenment, many great Christian writers did not. They have been largely forgotten to all but specialists. Their thinking on law, politics, and society needs to be retrieved, restudied, and reconstructed for our day.

A second challenge is to make these modern Christian teachings on law, politics, and society more concrete. In centuries past, the Catholic, Protestant, and Orthodox traditions alike produced massive codes of canon law and church discipline that covered many areas of private and public life. They instituted sophisticated tribunals for the equitable enforcement of these laws. They produced massive works of political theology and theological jurisprudence that

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<sup>23</sup> Hugo Grotius, *De Iure Belli ac Pacis* (1625), Prolegomena, 11, discussed in Oliver O'Donovan and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: Christian Political Thought, 100-1625* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 1999); Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta: Scholars Press, 1997).

worked out the precepts of proper Christian living in great detail -- and provided ample handholds in catechisms, creeds, and confessional books to guide the faithful. Some of that sophisticated legal and political work still goes in parts of the Christian church today. Modern Christian ethicists still take up some of these legal questions. Some Christian jurists have contributed to current discussion of human rights, family law, legal ethics, and church-state relations. But the legal structure and sophistication of the modern Christian church as a whole is a pale shadow of what went on before. It needs to be restored lest the church lose its capacity for Christian self-rule, and its members lose their capacity to serve as responsible Christian "prophets, priests, and kings."

A third challenge is for modern Catholic, Protestant, and Orthodox Christians to develop a rigorous ecumenical understanding of law, politics, and society. This is a daunting task. It is only in the past three decades, with the collapse of Communism and the rise of globalization, that these three ancient warring sects of Christianity have begun to come together and have begun to understand each other. It will take many generations to work out the great theological disputes over the nature of the Trinity or the doctrine of justification by faith. But there is more confluence than conflict in Catholic, Protestant, and Orthodox understandings of law, politics, and society, especially if they are viewed in long and responsible historical perspective. Scholars from these three great Christian traditions need to come together to work out a comprehensive new ecumenical "concordance of discordant canons" that draws out the best of these traditions, that is earnest about its ecumenism, and that is honest about the greatest points of tension. Few studies would do more both to spur the great project of Christian ecumenism and to drive modern churches to get their legal houses in order.

A final, and perhaps the greatest, challenge of all will be to join the principally Western Christian story of law, politics, and society told in these volumes with comparable stories that are told in the rest of the Christian world. Over the past two centuries, Christianity has become very much a world religion--claiming nearly two billion souls. Strong new capitals and captains of Christianity now stand in the south and the east -- in Latin America and sub-Saharan Africa, in Eastern Europe and the Russian theatre, in Korea, China, the Indian subcontinent, and beyond. In some of these new zones of Christianity, the Western Christian classics, including the work of some of the figures in this volume, are still being read and studied. But rich new indigenous forms and norms of law, politics, and society are also emerging, premised on very different Christian understandings of theology and anthropology. It would take a special form of cultural arrogance for Western and non-Western Christians to refuse to learn from each other.