

# Commonweal

A Review of Religion, Politics & Culture

DECEMBER 1, 2017

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SINGLE-PAYER HEALTH CARE

BERNARD PRUSAK ON  
SELECTIVE CONSCIENTIOUS  
OBJECTION

RITA FERRONE ON  
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EDWARD SKIDELSKY ON  
ALASDAIR MACINTYRE

**CHRISTMAS CRITICS**



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## LETTERS

### *Resisting racism, Christian activism, etc.*

#### NOT AN ANOMALY

As a black Catholic, I was disappointed to read the "After Charlottesville" editorial (August 22), which managed to repudiate Trump's response while producing a similarly dissatisfying reaction.

For one, Charlottesville is in no way an anomaly; it is a continuation of racial animus and violence that America has never confronted. Being a nation of laws didn't stop thousands of black people from being lynched, for example.

It is important to acknowledge that Charlottesville occurred in a context where white identity is growing stronger, along with the feeling that white people are being discriminated against and losing out on jobs to minorities. This cannot be ignored. It is exactly what propelled Donald Trump to the White House. Ignoring this reality and simply placing hope in elections falls short.

As a Christian, I believe strongly in the powerful combination of faith and works. As someone who works in politics, I believe strongly in the power of organizing. And as a black person, I know that the hard and tedious work of confronting racism is incumbent on white people.

I would feel much safer if white allies acknowledged America often falls short of the ideals they espouse, and began standing up to racism wherever it occurs. Only then will we make progress on racial injustice in this country.

ADRIENNE ALEXANDER  
*Chicago, Ill.*

#### ANTICS?

A recent editorial concluded that in our fight to eradicate hate and racism we should ignore the distracting antics of white nationalists and Nazis, choosing instead to show up to vote on election day. Labeling the actions of white nation-

alists as "antics" trivializes the danger inherent in their organized hate. It was Nazis who marched through the campus of the University of Virginia carrying torches and chanting slogans, not schoolyard bullies. Additionally, organized displays of hate are not a distraction. Labeling organized hate rallies as distractions prevents us from understanding that hate movements are fed and nurtured by the quiet, socially acceptable systems of privilege and oppression our country was quite literally built on.

We know with certainty that Nazis and white supremacists do not go away if Americans push them into dark places or trivialize their activities. Driving them into the darkness actually encourages and legitimizes their growth. It's only when we call them out into the light that we can systematically dismantle them in a public forum. That is not for the benefit of Nazis. It is for the benefit of Americans who do not understand that racism is not limited to organized hate groups and is present in our daily lives.

It is magical thinking to assume that the tools to eradicate racism will appear in a list of names on a ballot when we have failed to do the work necessary to create a country where the values of equity and justice can take root. The argument that electoral politics is the real path to eradicating racism and hate is alluring because it is a simple directive that presents few challenges. The argument forgives and even encourages silence, allowing well-meaning liberals to sit back and leave the fighting to someone else.

As Mark Lilla said in a recent interview with David Remnick of the *New Yorker*, "the first thing you do when fascists show up in the street is you show up, too."

There are fascists in our streets, and there is racism embedded in our way of

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life. We cannot dismiss or trivialize them either in practice or in the language we use to describe them. We must shine a light on them, strip them of their bluster, and notice how they exist in our daily lives.

We need to show up against racism every day—not just election day.

EMILY MILLER  
*Chicago, Ill.*

### THE EDITORS REPLY:

We thank Adrienne Alexander and Emily Miller for their letters. It is good to know that Catholic activism is very much alive in Chicago. On the substance of their complaint, however, we remain unconvinced. Showing up to vote is essential, but it is only one aspect of politics, as Alexander concedes. Organizing an effective political movement is a full-time job. As the editorial noted, the task of assessing and then influencing “public sentiment” is crucial to bringing about the change Alexander and Miller rightly hope for. That requires a commitment to engaging those one might otherwise disagree with, and that means not making sweeping accusations of racism against one’s political opponents. Now, the demonstrators in Charlottesville were self-avowed racists. But while most of the violence in Charlottesville was caused by the neo-Nazis, some of the counterprotesters also came armed. That was a moral and political mistake, and one of the principal concerns of the editorial. Why do Alexander and Miller ignore that fact? Most people follow politics only episodically, and when they see a violent confrontation between opposing groups they blame both sides.

It is worth remembering that when the American Nazi Party staged provocative marches in the 1960s, Jewish groups eventually decided to ignore them. It worked. The Nazi demonstrations dwindled in numbers and the group was ultimately consumed by infighting. There will always be a fringe element of right-wing extremists in this country. Why give them the publicity they are so desperately seeking?

### CHRISTIAN ROOTS

I was intrigued reading the symposium on Mark Lilla’s recent book *The Once*

and *Future Liberal* in the last issue (“Beyond Identity,” November 10). The four thoughtful, experienced people each contributed a different angle of vision to the topic.

What puzzled me, though, is that, despite the references to religious figures such as Martin Luther King Jr., there was no real mention of the fact that the civil-rights movement of the 1960s was deeply based upon the Christian tradition of nonviolence. Not merely the content but the tactics of liberals during that period had specifically Christian roots. Yet as the conflict at Charlottesville unfolded and in subsequent encounters, I have come to realize how much I miss that voice of unshakeable commitment within both action and discussion. Without brave people whose ideals transcend the way that “the world” does politics, how will we ever achieve reconciliation?

MICHAEL MARCHAL  
*Cincinnati, Ohio*

### MISSING PERSON

In regard to Jerry Ryan’s “The Other Guy” (July 7): I am eighty-eight years old and I too remember when the second person of the Trinity was called the Holy Ghost. I was happy when we began to say “Holy Spirit.” Ryan is concerned that we don’t hear or say much about the Holy Spirit in the Catholic Church. I share his concern.

From about 1980 onward for twenty-five years or more there were three Catholic prayer groups in our four-county area. Two were led by priests and one by a layman. The Holy Spirit had a prominent place in these meetings, in the prayers and in the hymns: “Come Holy Spirit,” “Spirit of the Living God Fall Afresh on Me,” “There’s a Sweet Sweet Spirit in This Place,” and others.

I took part in each of these groups at one time or another and they were Spirit-filled meetings. However, after a time the leaders either moved away or died and the groups disbanded. I miss the fellowship but the Holy Spirit is definitely a part of my life, not just a “phantom shrouded in mystery,” to use Ryan’s words.

TERESA MOTTET  
*Fairfield, Iowa*





# The Way the World Works?

**C**redit Gary Cohn for being straight about who would benefit from the Republican tax plan. In an interview with CNBC, Donald Trump's chief economic adviser revealed that the "most excited group out there are big CEOs." As well they might be. The proposed cut in the corporate tax rate means greater profits and thus higher share prices, which would be further boosted by loosened restrictions on stock buybacks. Chief executives whose compensation is tied to share performance would therefore gain directly, and thanks to changes in the rate structure would see their taxes on this income reduced. But their employees would get little to nothing out of the arrangement, according to the nonpartisan Center for Budget and Policy Priorities, and once the modest credits for lower- and middle-income earners expire a decade from now, they'd face a tax hike. That's to say nothing of the likely explosion of the deficit, which the very Republicans who lit the fuse could then cite as justification for cutting Social Security, Medicare, Medicaid, and other programs millions of ordinary Americans rely on. All this explains the appalled reaction of the U.S. bishops, who condemned the plan as "unconscionable" and "unacceptable."

Whether the plan with its current inequities survives the Senate's complicated reconciliation rules remains to be seen. But even without the aid of compliant lawmakers, major corporations and the richest individuals have ways, to borrow a phrase, of rigging the system. The degree to which they do so was most recently made clear with the November release of the Paradise Papers, a trove of more than 13 million legal and financial documents leaked to a German newspaper and shared with the International Consortium of Investigative Journalists. The documents, many originating from the offshore law firm Appleby, detail the elaborate mechanisms and complex financial networks corporations and wealthy families use to dodge taxes on a global scale. The "papers" show how entities and individuals stash billions in shell companies; shift the assets to havens like Bermuda, Cyprus, and the Isle of Man; and launder the money through a range of offshore investments. The hiding of such sums has obvious and quantifiable impacts. Worldwide, corporate tax avoidance has deprived governments of \$699 billion in tax revenue in 2017. The United States alone loses out on \$111 billion

each year, according to Oxfam, while collectively the poorest countries are deprived of \$100 billion annually. Meanwhile, it's estimated that \$8.7 trillion—11.5 percent of global gross domestic product—is held offshore by ultra-wealthy families, most of it unreported. All of this represents money that could be used for investments in health care, infrastructure, education, poverty relief, and many other programs.

Of greater concern is the widening gap in global economic inequality the Paradise Papers reveal. Dodging taxes has helped the rich build what an editorial in the *Guardian* ominously calls their own "globally mobile republic." Just 1 percent of the world's population now owns half its wealth. The ultra-rich can also exert outsized influence on policy and politics. The documents show that hedge-fund manager Robert Mercer, for example, used tens of millions of dollars stashed offshore to fund Breitbart News and support Steve Bannon's attacks on Hillary Clinton during the 2016 campaign. Hedge-fund manager and Democratic donor James Simons, who gave Clinton \$11 million in 2016, was revealed to have hidden more than \$8 billion in tax-free Bermuda. Cohn himself turns up in the documents, his name linked to nearly two dozen business entities in Bermuda from his time at Goldman Sachs.

It may not come as a surprise that many of the activities detailed in the Paradise Papers are legal. "This is the way that the world works," Cohn insisted when asked about tax avoidance in the same CNBC interview. But as any third-grader could tell you, just because it's allowed doesn't mean it's the right thing to do, and the line separating avoidance from evasion—which *is* illegal—is easily crossed. Economists have proposed international registries and other reforms aimed at exposing abuses, but these efforts meet with predictable resistance from wealth-management firms and their politically influential clients. "Excessive economic and social disparity between individuals and peoples of the one human race is a source of scandal and militates against social justice, equity, human dignity, as well as social and international peace," the council fathers wrote in *Gaudium et spes* more than fifty years ago. That scandal will persist until we truly hold the wealthy to account as citizens with a responsibility for the common good. ■

November 14, 2017

Margaret O'Brien Steinfels

# Nope to Hope

TA-NEHISI COATES'S BLEAK VIEW OF AMERICA'S RACIAL POLITICS

Lifting the *Atlantic's* October issue off the magazine rack, I guessed that "The First White President" by Ta-Nehisi Coates, wasn't about George Washington. Coates, African-American writer and provocateur, argues that Donald Trump is the "first white president," a practitioner of "white supremacy, in all its truculent and sanctimonious power." In pressing his case that white racism is fundamental to Trump's victory, he downplays, indeed objects to, the role of class, non-voters, stupidity, unemployment, and animosity toward Hillary Clinton. His argument may be shortsighted, but it is also instructive.

*Between the World and Me*, Coates's last book, was written in the wake of Michael Brown's death in Ferguson and the deaths of other black men at the hands of police. In part a memoir of growing up amid the violence of Baltimore, it was a warning to his adolescent son of the threat the nation posed to his black body. The book was painful to read for both his indictment of racism and his roiling anger. Was it only racism that stoked this cri de coeur, or was it his father's punishments ("either I can beat him, or the police"), or even, as a recent *Guardian* article speculated, an atheism that left him without hope?

*Eight Years in Power*, a collection of his *Atlantic* articles, traces Coates's move from angry provocateur to public intellectual. The shift came with "The Case for Reparations," in which he called for recompense to African Americans for slavery and its after-effects. The essay brought notoriety as well as recognition. Strangers stopped to question, to talk, to praise. On the subway "a middle-aged white man began gesturing toward me. I

took off my headphones. He lauded the article." To Coates's amazement, people were wrestling with his ideas. The trajectory from the angry young man to the reflective essayist in this collection shows him writing his way out of the Baltimore cul-de-sac.

The *Atlantic's* imprimatur (supporting him "with fact checks and pay checks")



Ta-Nehisi Coates

paved the way, along with a trove of prizes and awards. Yet as important as this public recognition, a "tutorial" with Barack Obama gave him another way to see things. "My President Was Black" weaves an account of their conversations, with Coates noting their different levels of trust in white people. Obama was not an angry man—not angry about his father, or about racist attacks, or about whites. His white mother and grandparents "loved him ferociously, supported him emotionally, and encouraged him intellectually. They also told him he was black." He makes much of Obama turning away from the path to the white world this interracial upbringing provided. In Coates's eyes, Obama "chose" to be black.

A preface to "My President Was Black" reprises the encounters, the back and forth, between professorial president

and passionate advocate. They disagree about reparations, about Obama's "condescending" advice to black parents (turn off the TV), and Coates's default view of racism as all-explanatory. Still, he judges Obama "a skilled politician, a deeply moral human being...[and] the most agile interpreter and navigator of the color line I had ever seen. He had an ability to emote a deep and sincere connection to the hearts of black people, while never doubting the hearts of white people."

Then came the 2016 campaign. Obama was emphatic: Trump "can't win!" Coates thought Trump "wouldn't win." Trump won. "What amazes me," Coates writes, "is the ease with which two people, knowing full well what this country is capable of, dismissed the possibility of a return to the old form." That gives Coates leave in "The First White President" to revert to his default argument. Without qualifications for office, Trump's race "is the very core of his power."

Trump's winking and nodding at white supremacists supports Coates's point, without clinching his it's-all-white-racism verdict. Coates dismisses other explanations: blacks and whites who didn't vote, James Comey, the Russians, Hillary hatred, etc. In particular, he vehemently and at length rejects the favored explanation of Democrats, pundits, and the liberal commentariat: neglect of the white working class. Coates is right that race has always been a component of our understanding (and our manipulation) of class. He is wrong to suggest that it is the only factor that matters—or that paying attention to other problems can only reinforce racism. But to ignore his anguish at the threat of reinvigorated racism—that would be wrong, too. ■



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Rita Ferrone

# Changing the Atmosphere

WHY POPE FRANCIS'S SUPPORTERS SHOULD MAKE THEMSELVES HEARD

There's a perception out there—especially in the English-speaking world—that the Catholic Church right now is a simmering cauldron of discontent. The most recent pot-stirrer is Capuchin Fr. Thomas Weinandy, former doctrinal chief of the U.S. Catholic bishops' conference. He released to the press a letter he sent to Pope Francis, which faulted him for creating confusion, appointing errant bishops, and demeaning doctrine in general. Earlier this fall, a group of sixty-two clergy and academics published what they termed a “filial correction” of the pope, accusing him of spreading heresy. Their initiative was an attempt to go farther down the road trod by four cardinals, led by Raymond Burke, who wrote the now-famous “dubia” letter that directed sharp questions at Francis after the Synod on the Family. Small wonder that the BBC felt it timely to produce a program titled “Is the Pope Catholic?” while the *Guardian* discussed “The War Against Pope Francis.”

Those who support Pope Francis's leadership have tended to keep a fairly low profile by comparison. But that may be changing. Indeed, an outstanding demonstration of public support has arisen in Central Europe in recent weeks. Two highly respected academics, Tomáš Halík in Prague and Paul Michael Zulehner in Vienna, both Roman Catholic priests, wrote an open letter of support for Pope Francis and invited others to sign. As the “filial correction” letter, announced with great fanfare in September, has fizzled, going from 62 signatories to a mere 250, backing for the “Pro Pope Francis” letter has taken off like a rocket. As of this writing, more than 49,000 people have added their names, either as signatories or supporters.

But it's not just the number of signatories; it's *who* they are as well. Many of them are university professors from German-speaking Europe and the Czech Republic, but eminent leaders from around the world, in public life and the church as well as the academy, also included their names. The philosopher Charles Taylor, South African bishop Kevin Dowling, former Hungarian President László Sólyom, spiritual writer David Steindl-Rast, former German Bundestag President Wolfgang Thierse, and Erwin Kräutler, the “legendary bishop of the Xingu” in the Amazon, have all signed on, along with many others.

Halík and Zulehner's motivation in writing the letter was not to influence Francis, who they believe is doing just fine. Neither is the letter an attempt to engage the arguments of the pope's critics—something they believe is better accomplished in other fora. Rather, it is a witness to their confidence in what Francis has done and is trying to do to “reshape the pastoral culture of the Roman Catholic Church in accordance with its origin in Jesus.”

Tobias Glenz, editor of *Katholisch.de*, the news site of the Catholic Church in Germany, judged the initiative a helpful step toward correcting an imbalance. It is easy to get the mistaken impression online, where the most vehement voices gain the most attention, that opposition to Francis is strong and growing, he wrote. “It would be nice if, in the future and more frequently...the positive voices would speak.”

Others have objected that an open letter of this kind is inappropriate because it ought to be assumed that Catholics support the pope as a matter of course. To think otherwise erodes

a basic presumption of Catholic faith. “The Creed is my petition,” Glenz's colleague Kilian Martin argued in the same issue, as a counterpoint to his view. Petitions and letters do nothing more than “deepen the trenches,” he wrote.

Besides, the fact that people sign a letter does not prove or disprove the validity of the pope's teaching. “It takes a long-term process to discern shifts in tradition,” church historian Massimo Faggioli observed in *La Croix International*. He expressed concern that petition campaigns “risk opening the gates to ecclesial populism” and encourage the formation of political parties in the church.

My own feeling, however, is that Glenz has put his finger on a critical point. If affirming voices don't speak up in our public spaces, hostile and fearful messages will predominate. Many people are alienated from the church precisely because of the kind of fractious and judgmental atmosphere the naysayers evoke. We are all responsible for creating a better atmosphere. What Francis is trying to do in shaping the “pastoral culture of the church” at this moment in history is not an easy task, but it is essential. We need to get behind him. Public statements are part of it.

As I read the testimonials included on the “Pro Pope Francis” website, I found myself inspired—not because I felt that trenches were deepening, but because it seemed that people were climbing out of their trenches. There were no denunciations or attacks, no sense of being locked in a death grip with foes. Although prompted by conflict, the letter has become something better: a testimony of gratitude. We need more of this. ■



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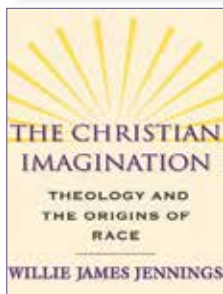


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*J. Peter Nixon*

# Slow Down on Single Payer

**DEMOCRATS SHOULDN'T MAKE PROMISES THEY CAN'T KEEP**

A political party is forced to embrace increasingly extreme and unrealistic policy positions to placate base voters driven by hatred of a sitting president. Upon its return to power, the party finds itself trapped between the widespread unpopularity of those positions and grassroots voters in no mood for compromise.

A description of the Republican Party in 2017? Certainly. If the Democrats are not careful, however, it could apply to them in 2019 or 2021. Inspired by the leadership of Senator Bernie Sanders, a growing number of party activists are making support for “single-payer” health care a litmus test for their support.

Sanders released a new version of his single-payer bill, the Medicare for All Act, in September. The bill was co-sponsored by virtually all of the Democrats’ likely presidential candidates in 2020, including Senators Elizabeth Warren (D-Mass.), Cory Booker (D-N.J.), Kirsten Gillibrand (D-N.Y.), and Kamala Harris (D-Calif.).

But while the broad concept of single payer often polls well, its details (e.g., large tax increases) have often been seen as politically toxic. As *Business Insider* columnist Josh Barro recently put it: “single payer is the left’s ‘repeal and replace Obamacare.’ Popular mantra, fatal details.”

Although virtually all industrialized countries have some form of national health insurance, the programs vary widely in how they are designed. In Great Britain, for example, the government directly owns and operates the clinics and hospitals and most physicians, nurses, and other health-care workers are public employees. In Germany, by contrast, most physicians are in private practice, hospitals are run as nonprofits, and insurance coverage is provided by a network of more than a thousand “sickness funds.”

Historically, when grassroots activists talked about single payer, they often had the Canadian health-care system in mind. Often thought of as a “national” insurance plan, the Canadian system is moderately decentralized with each province or territory operating its own plan. Each provincial plan must cover a standard package of benefits established by the federal government. While those services are free at the point of service, the provincial plans are not required to cover the cost of prescription drugs, long-term care, or dental and vision services. About two-thirds of Canadians take out private policies to cover the cost of those services and often pay some of the cost out of pocket. As a result, about 30 percent of health-care spending in Canada’s “single-payer” system comes from private sources.

Because the provinces are the single payer for most hospital and physician services, they can exercise a significant degree

of control over costs. The provinces engage in a form of collective bargaining with physicians over their fee schedules and provide hospitals with a fixed amount of money to spend. As a result, Canada spends less than half as much on health care per person as the United States does. While Canadians often face longer waits than privately insured Americans for certain types of specialists and procedures, there is little evidence—despite the occasional Fox News horror story—of a negative impact on health outcomes.

A single national-health-insurance plan covering all Americans has been a goal of progressives for almost a century. President Franklin Roosevelt considered including a health-insurance system for the poor in the Social Security Act of 1935, but was concerned that opposition from physicians might doom the entire legislation. His successor, Harry Truman, supported a universal national-health-insurance plan, but lacked a supportive Congress.

By the early 1960s, the significant expansion of employer-based health insurance (spurred by its favorable tax treatment) led many policymakers to look for ways to fill the gaps in that system rather than embrace single payer. President Lyndon Johnson and a heavily Democratic Congress were able to push through Medicare (a federally administered program for those over sixty-five) and Medicaid (which provided federal funding to states so they could operate programs for the very poor). In the 1970s, President Richard Nixon supported requiring employers to provide health insurance to their employees if their employees were willing to pay some of the cost, but the proposal was opposed by many Democrats who favored a more universal approach and objected to the plan’s cost-sharing provisions.

By the 1990s, the rising cost of health insurance and the growing number of uninsured led many single-payer advocates to believe their time had come. Pointing to the relative success of the Canadian system, they argued that adopting a similar model could provide universal coverage while slowing the growth of health-care costs. President Bill Clinton’s proposed Health Security Act, however, embraced a “managed competition” approach, whereby employers and individuals would buy their insurance through large purchasing cooperatives.

In a nod to those who argued that the plethora of overlapping public and private programs led to confusion and excess costs, Clinton tried to bring Medicaid, state and local government plans, and private plans with fewer than five thousand employees into the purchasing cooperatives. The resulting backlash from all those stakeholders was an often unappreciated factor in the bill’s failure. In the end, Clinton,



like many of his predecessors, had to accept a small patch to the current system, expanding coverage to uninsured children through a new Children's Health Insurance Program.

Nor did supporters of single payer fare any better in the Obama administration. Neither Obama nor his Democratic primary opponent Hillary Clinton had much sympathy for it, and Obama's subsequent bill resembled a system developed in Massachusetts by Republican governor Mitt Romney. Obama's one concession to single-payer advocates was the inclusion of a "public option," where a public-health plan would compete alongside private plans. That provision, however, was subsequently dropped during congressional negotiations because of opposition from the insurance industry. Obama, like Clinton, learned that disrupting existing insurance arrangements can be politically dangerous. His famous pledge that "if you like your plan you can keep it" was widely derided after several insurers announced they were terminating plans that were not compliant with the ACA's coverage requirements.

**T**o many on the Left, this history shows how progressive activists have continually been betrayed by Democratic politicians beholden to corporate special interests, particularly the health-insurance industry. While granting that there is some truth to this assertion, less ideological observers might point to the enormous technical and political challenges involved in transitioning from the current patchwork of private and public programs to a single streamlined system.

The most serious of these challenges is, of course, the ubiquity of employer-provided health insurance, which has proved far more resilient than many expected. Health-policy

experts who believe we need to move beyond employer-based coverage were hoping that more employers would substitute cash for coverage and encourage their employees to purchase coverage on the ACA's health exchanges. Most employers understand, however, that even if the legal and technical obstacles to such an approach could be overcome, the result would be an enormous backlash on the part of their employees and the likely departure of key talent. Only in the face of serious business failure are most employers likely to contemplate such a move.

If employer-based coverage remains the default system of coverage for most working-age Americans, it is an obstacle to single payer that will be extraordinarily difficult to overcome. While polls do show that a very large share of those in public plans like Medicare and Medicaid are satisfied with their coverage, roughly two-thirds of those with employer-provided coverage are similarly satisfied. As Clinton and Obama learned, making even relatively small changes to the employer-based system is fraught with political peril. The forcible movement of more than 150 million people (a population greater than the combined enrollment of Medicare and Medicaid) from private plans to a single public one is something that few political leaders will be willing to defend once its contours become clear.

Supporters of single payer believe the opposition will melt away once those enrolled in employer-based coverage see that they will have better benefits and lower costs in a government-run program. This is true only if one grants the highly questionable assumption that the extraordinarily generous benefits envisioned by most single-payer proposals—which exceed those provided by any national health insurance system on the planet—would survive the legislative

## C 54

To the dirt that no longer moves  
you offer a mask the way a flower  
over and over is readied for mornings

where time begins again as stars  
sensing honey and more darkness  
—by evening your death

will be used to footsteps one by one  
broken off a great loneliness  
returning row by row as the small stones

cut out for the mouth and eyes  
to sweeten it, ask  
where you are going by yourself.

—*Simon Perchik*

process unscathed. Senator Sanders's single-payer bill, for example, covers several items not covered in the Canadian system, such as prescription drugs, long-term care in a skilled nursing facility, home health, vision, and dental. Sanders would provide all this with virtually no cost-sharing, a departure not only from most private plans, but also from Medicare, which requires seniors to pay for 20 percent of the cost of many of the services they receive.

Such generosity, while laudable in many ways, creates an enormous financing challenge. An Urban Institute analysis of an earlier version of the Sanders bill found that it would cost \$32 trillion over ten years. By comparison, projected *total* federal spending over the next ten years under current law was \$54 trillion. The institute also found that Sanders's proposed financing was woefully inadequate, covering less than half the cost of the program. The most recent version of the bill does not solve the problem, as most of its potential financing mechanisms are not contained in the bill itself but rather in a separate document that lays out a set of options.

To be fair, one could imagine a less ambitious approach to single payer that would address some of these concerns. A less generous benefits package with modest cost sharing would reduce the amount of revenue that needs to be raised through taxation. Allowing employers and individuals to buy into Medicare or Medicaid voluntarily would allow those

programs to demonstrate their value to those skeptical of government-run insurance.

But even this approach is likely to run into fierce political opposition. Insurance companies will complain (not unjustifiably) about having to compete against public programs that can simply dictate the prices they are willing to pay. Members of Congress are likely to be particularly sympathetic to the arguments of doctors and hospitals in their districts who are convinced—rightly or wrongly—that they cannot survive on what Medicare and Medicaid are willing to pay them for their services.

One would think that in the face of these challenges, advocates for single payer would show some humility in dealing with lawmakers. If anything, however, the opposite has been the case. In California, a fight over single payer is threatening to split the Democratic Party. Earlier this year, the powerful California Nurses Association (CNA) demanded that state legislators support its proposed single-payer bill, S.B. 562, despite the lack of a clear financing mechanism. Because of the bill's generous benefits package, the state's Legislative Analyst's Office estimated it would cost \$400 billion, only half of which could be raised by repurposing existing state spending.

The bill passed the state Senate but was pulled from the floor of the Assembly by Speaker Anthony Rendon who described it as “woefully inadequate” due to its financing problems. The CNA's executive director, Rose Ann DeMoro, responded by tweeting a picture of the California flag showing its iconic bear with a knife in its back labeled “Rendon.” Rendon also received death threats by phone and by Twitter. He was subsequently defended by other labor leaders in the state, most of whom are publicly committed to single payer.

For all its faculty-department viciousness, the California debate may be a good sign. It suggests that the state's Democrats have not completely lost sight of the complexities and tradeoffs involved in the work of serious governance.

The national party could be a different story. With its grassroots increasingly committed to maximalist positions and virtually all of its likely candidates for president committed to backing the Sanders bill, there is a risk that the Democrats will succumb to ideological groupthink. The feasibility of single payer will be taken for granted, much in the way that the feasibility of repealing Obamacare was taken for granted by Republicans. That unanimity blinded the party to the policy challenges and political risks associated with its position, leading to a legislative failure that may yet imperil the party's control of Congress and the presidency. Democrats would do well not to follow this example. ■

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Bernard G. Prusak

# A Right Not to Fight

## MAKING THE CASE FOR SELECTIVE CONSCIENTIOUS OBJECTION

As the nation reckons with life under its irascible, sometimes seemingly irrational president, prayers for peace have never seemed so important. For who knows what Donald Trump will and won't do—first and foremost, to North Korea and Iran? Such basic uncertainty about the uses of U.S. power gives us reason to reinvigorate a Vietnam-era debate over a right that has the potential to bend swords into plowshares: selective conscientious objection.

To anyone enamored of the categorical imperative, selective conscientious objection may seem badly misguided. How can a political society function if its citizens are legally permitted to decide for themselves which wars are just or unjust and which laws they will and will not observe? As John Courtney Murray, SJ, noted, in a 1967 college commencement address, “no political society can be founded on the principle that absolute rights are to be accorded to the individual conscience.” That is certainly true, but when it comes to the First Amendment's free-exercise-of-religion clause, as recently refashioned by the Supreme Court in the Hobby Lobby case, it is quite possible that the cause of selective conscientious objection has been given new constitutional standing. Let me explain.

In a lawfully declared war, the nation's leaders have presumably judged the war necessary and justified. The selective conscientious objector may disagree with this decision, but why should his or her disagreement be legally accommodated? Why should he or she, if drafted, be permitted *not* to fight? In a time of seemingly endless war, such questions have a particular urgency and significance. Readers of literature might recall Tim O'Brien's short-story collection *The Things They Carried*, where a narrator struggles with whether “to fight a war I hated”—namely, the American war in Vietnam. Imagine the difference it would make for such a man if the prevailing belief in our society linked the question of whether a soldier fights honorably to the question of whether the war in which he fights is justified. How much more responsible and transparent would our political leaders have to be in making the case for war? Then go further: What difference would it make if such a man could legally refuse to serve by virtue of longstanding, deeply rooted convictions about the ethics of killing for an unjust cause?

The philosopher Jeff McMahan has argued that “we must stop reassuring soldiers that they act permissibly when they fight in an unjust war, provided that they conduct themselves honorably on the battlefield.” Once this belief is discredited, McMahan believes, we will possess “an important resource for the prevention of unjust wars”—one that, to date, has been quashed by the just-war tradition's separation of *jus*



Five protesters, including the Catholic Worker Tom Cornell, burn their draft cards at Union Square, New York City, November 1965.

*ad bellum* (just cause for going to war) from *jus in bello* (just conduct in war). What is that resource? “The moral conscience of individuals.”

This revisionist account of just-war thinking gives support to positions staked out by the United States Conference of Catholic Bishops. In landmark letters in 1983 and 1993, the bishops affirmed both that “a citizen may not casually disregard his country's conscientious decision to call its citizens to acts of ‘legitimate defense’” and that, “at the same time, no state may demand blind obedience.” The bishops' insistence that “no state may demand blind obedience” led them to support both “conscientious objection in general and...selective conscientious objection to participation in a particular war, either because of the ends being pursued or the means being used,” such as nuclear weapons. The bishops called, accordingly, for the provision of legal protection for selective conscientious objectors.

The Supreme Court, in a 1971 decision, rejected arguments for selective conscientious objection. *Gillette v. United States* and *Negre v. Larsen*, two cases consolidated before the Court, presented different backgrounds and arguments: Guy Gillette appealed to humanistic principles for his refusal to serve in Vietnam, whereas Louis Negre, a Roman Catholic, sought a discharge after consulting with a Jesuit at the University of San Francisco, Fr. James Straukamp,

## AMERICAN ÉMIGRÉ

The fence that wrapped our field  
has collapsed from bolting horses &  
the steady weight of winter. Barbs  
no longer snag our jeans or bloody  
our hands when we flee the burning  
that is home. Small signal fires light  
the hills red. Another country some-  
where out there promises a peace it  
cannot possibly keep. Repeat after  
me: the cities we'll build on the ruin  
of other cities will shimmer & shine  
before they fall.

—John Sibley Williams

*John Sibley Williams is the author of nine poetry collections, most recently Disinheritance. A seven-time Pushcart nominee and winner of various awards, John serves as editor of the Inflectionist Review.*

who advised him that “under the beliefs and teaching of the Catholic Church he [was] obliged to examine and form his own conscience in respect to participating or refusing to participate in the war.”

The petitioners made two arguments: first, that limiting legal protection to universal objectors while excluding selective objectors amounts to the establishment of religion—in violation of the First Amendment; and second, that making no provision for selective conscientious objectors is tantamount to prohibiting the free exercise of religion, again in violation of the First Amendment. Justice Thurgood Marshall’s majority opinion rejected these arguments. While acknowledging that even generally applicable, religion-neutral laws with secular aims may run afoul of the First Amendment when the laws in question burden religious practice, the Court judged that “the incidental burdens felt by persons in petitioners’ position are strictly justified by substantial government interests”—in particular, that of “procuring the manpower necessary for military purposes.”

Justice William Douglas dissented in both cases. In his dissent to *Gillette*, Douglas asserted his belief “that the welfare of the single human soul was the ultimate test of the

vitality of the First Amendment.” In his dissent to *Negre*, he focused on “doctrines of the Catholic Church” and drew from a brief by the late John T. Noonan Jr., then a lawyer representing *Negre*, to find *Negre*’s free-exercise argument persuasive. Noonan later became a federal judge, and he remained on record as disagreeing with the Court’s ruling in the 1971 case. Writing in 1998, he blamed it for entrenching unequal treatment among churches and beliefs, in violation of the First Amendment.

Yet the law concerning religious liberty has changed since 1971, and particularly since the Supreme Court’s 1990 decision in *Employment Division v. Smith*, which took up the use of peyote in Native American ceremonies, and ruled that states were not required to accommodate illegal acts performed as part of a religious belief. Before *Smith*, the Court generally used a balancing test in its free-exercise cases, as it did in *Gillette* and *Negre*. This test “took into account,” Justice Samuel Alito explained in the recent *Hobby Lobby* decision, “whether the [government’s action] imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest.” By contrast, Justice Antonin Scalia’s 5-4 opinion in *Smith* concluded that “generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest.” Granting such autonomy to religious groups, Scalia wrote, “would be courting anarchy.”

Three years after *Smith*, Congress made clear its disagreement. The Religious Freedom Restoration Act of 1993 (RFRA) prescribes that “government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability”—that is, one not directed against this or that religious practice or interest. To allay Scalia’s fear that every citizen might become a law unto herself, Congress allowed for exceptions, stating that any burden imposed must be (1) “in furtherance of a compelling governmental interest” and (2) “the least restrictive means of furthering that compelling governmental interest.” A point of dispute in RFRA-related cases, including those over the Affordable Care Act’s so-called contraceptive mandate, is whether the law simply restores the pre-*Smith* compelling-interest test, or goes even further, through its least-restrictive-means test. Alito’s 2014 majority opinion in *Burwell v. Hobby Lobby Stores, Inc.* interprets RFRA as going beyond the Court’s pre-*Smith* jurisprudence.

This interpretation appears to clear the way for a renewed free-exercise argument on behalf of selective conscientious objection. In *Gillette* and *Negre*, the Court based its rejection of the free-exercise argument on the claim that the government’s interest in raising and supporting armies is sufficiently compelling to justify any incidental burden on religious liberty. (Noonan: “What was truly sacred was not the claim of conscience but the security of the nation.”) But

pre-RFRA, the Court did not have to address the question of whether forcing objecting soldiers to fight qualifies as the *least restrictive* means of furthering the compelling governmental interest in question.

It is hard to believe that this could be so. In 2007, the Catholic Peace Fellowship, which according to its website “offers practical and pastoral support to military and veterans who are struggling with the contradiction between their personal participation in war and their consciences,” reported that, since the Iraq War began in 2003, it had heard from more than a thousand soldiers. Imagine that these thousand soldiers became selective conscientious objectors. Would finding alternative service for them have prevented the government from procuring the manpower necessary for military purposes? Probably not. Admittedly, if a hundred thousand soldiers refused to serve, the nation’s war plans might well be undermined; but if opposition to a war were that prevalent, one might well conclude that the government was going to war against its people’s wishes.

**I**t might also be argued that the government has a compelling interest to avoid the logistical problems of selective exemption, which is much more complicated than exempting only proven pacifists (that is, universal conscientious objectors). This objection leads us back to the Vietnam-era debate that exercised not only John Courtney Murray, but the Protestant ethicist Paul Ramsey, among others. As it happens, both opposed according absolute rights to individual conscience, and recognized the “conscience of the laws” enacted by public officials, yet both also supported selective conscientious objection. On what grounds?

Murray and Ramsey thought that the first question to be answered is whether such a system could be administered fairly. How can courts decide which grounds for objection warrant respect and which don’t? After all, the mere fact that a conscript or soldier is struggling in his conscience does not tell us if his conscience is well formed. Maybe he’s not only all wrong about the facts of the war, but morally ignorant as well. Or maybe his conscientious objection is morally idiosyncratic—for example, if he refuses to fight fellow Christians or fellow Muslims, whatever the justice of his nation’s cause. A right to selective conscientious objection might be well founded in theory, but trying to accommodate this right would entangle courts in an unholy mess.

Ramsey’s response is particularly instructive. He proposes limiting “the class of exemptible conscientious objections” to those based on the norms of conduct governing war: more precisely, the traditional norms of *jus ad bellum* (justice in going to war) and *jus in bello* (just conduct in war). In other words, in order to be exempt, the conscript or soldier would need to show that his or her objection is based on norms that the world’s nations already recognize. Limiting the class of objections in this way rules out not only those based on idiosyncratic moral codes, but those based on strictly political disagreements with the lawful decisions of a nation’s leaders.

To qualify, conscientious objections must be based not merely on disagreements about the wisdom or likely consequences of going to war, but on the morality of going to war in the light of internationally recognized norms.

A worry persists—namely, that Ramsey’s proposal favors the educated, who would know that they needed to appeal to the traditional principles of just-war theory. Well-educated, articulate kids—most from well-to-do backgrounds—would get off, while poor kids would do the fighting. This is a worry expressed by both friends and critics of selective conscientious objection. The political philosopher Michael Walzer, for instance, holds that “democratic states suffer whenever conscience is coerced” and thus favors selective conscientious objection, but also recognizes that such a development “will almost certainly introduce...a pronounced class bias.”

Surely the government has a compelling interest in not fighting the nation’s wars on the backs of the poor and uneducated. But is ruling out selective conscientious objection the least restrictive means to further this interest? Surely not. To rule out selective conscientious objection on the grounds that it is biased toward the well-educated and well-off casts the poor and uneducated as incapable of developing well-founded objections. Better remedies exist. If the government really desires to avoid unfairness, then it should support organizations, like the Catholic Peace Fellowship, that offer support and counseling to soldiers and conscripts. It should provide relevant education to all soldiers, as well as see to it that the nation’s public education system is adequately funded across all school districts. To reject selective conscientious objection as unfair to the poor and uneducated is a cynical cop-out.

Peace-seekers today face a promising opportunity. Selective conscientious objection appears to have both philosophical and legal arguments in its support. Accordingly, should the Trump administration lead the nation into an unjust war, the time appears ripe to bring a new constitutional challenge to current law. And the U.S. Conference of Catholic Bishops should take a leading role. Not only do the bishops lead the nation’s largest religious group, and not only do they officially endorse selective conscientious objection; they also have been heavily invested in RFRA-related litigation over provisions of the Affordable Care Act. In line with Pope Francis’s re-orientation of Catholic social teaching to prioritize global poverty, the degradation of the earth, and the depredations of war, the bishops ought now to take action for peace. They should help revive the debate over selective conscientious objection in light of RFRA and in anticipation of our current president’s poor judgments. The sooner the better. ■

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# Christians & the Death Penalty

*There Is No Patron Saint of Executioners*

David Bentley Hart

I would be lying if I claimed that my initial approach to *By Man Shall His Blood Be Shed* was an unprejudiced one—I am firmly convinced that no Christian who truly understands his or her faith can possibly defend the practice of capital punishment—but I was not unwilling to give the book a fair hearing. My convictions on the matter may be fixed, but they are not always passionate. There have been various occasions over the years when I have found myself desiring the deaths of some especially vicious criminals, including two who casually murdered an exceptionally gentle friend of mine when I was in college. And I have never shed a tear over the Nazis executed by the Allies after the Second World War. I am quite able to be heartless toward the heartless. But this book would exhaust the ruthlessness of Torquemada.

I might have guessed that something was terribly amiss just from the title. There is nothing especially mysterious about it: it is more or less inevitable that any substantial attempt at a Christian defense of capital punishment will repeat two tediously persistent exegetical errors—a misuse of Genesis 9:6 (hence the title) and a misreading of Romans 13:1–7. But it makes some difference which of the two is accorded priority. If the latter, then in all likelihood the argument being made is merely that the death penalty is theologically *licit*; if the former, that it is morally *necessary*. And so it is in this case: the claim Feser and Bessette advance is not simply that Catholics *may* approve of capital punishment, but that they *must*, and that it actually borders on heresy not to do so. Needless to say, an assertion that bold requires a formidable array of corroborating evidence, and this Feser and Bessette fail to provide. What they have produced instead is relentlessly ill-conceived. Its arguments, philosophical and historical, are feeble. Its treatment of biblical texts is crude, its patristic scholarship careless. And all too often it exhibits a moral insensibility that is truly repellant.

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This last is true even if one ignores the authors' transparent attempts to coerce their readers' emotions. Not that they admit to this: by their account, all they really want to do is "dissipate the fog of naïve sentimentality that too often prevails in contemporary discussions of capital punishment." They certainly do not intend, they say, to appeal to irrational passions. Yet they devote an entire chapter to a revolting catalogue of particularly horrific "true crimes," just to remind their readers how evil real evil can be. What could this possibly be other than an appeal to passion? Everyone already knows, and would surely stipulate, that the world is rife with human atrocities, and that their perpetrators certainly do not *merit* our mercy. Among principled opponents of the death penalty, very few could be accused of nurturing any tender illusions

regarding the deeds or characters of violent criminals. Moreover, whenever one party to a debate dismisses the ethical concerns of the other side as "sentimental," it is usually an indication of the former's inferior moral imagination. And in the context of this discussion it is particularly revealing. To cultivate pity (or at least concern) for those who deserve no pity—even those justly condemned of monstrous evils—is not sentimentality but charity, the chief of all Christian virtues. It is a hard discipline, and usually evidence of a genuinely diligent conscience. It is also an extremely valuable intellectual hygiene. Compassion is a philosophical virtue, one that makes it possible to grasp truths invisible to the morally obtuse. The limits of moral imagination are also the limits of the capacity to reason well.

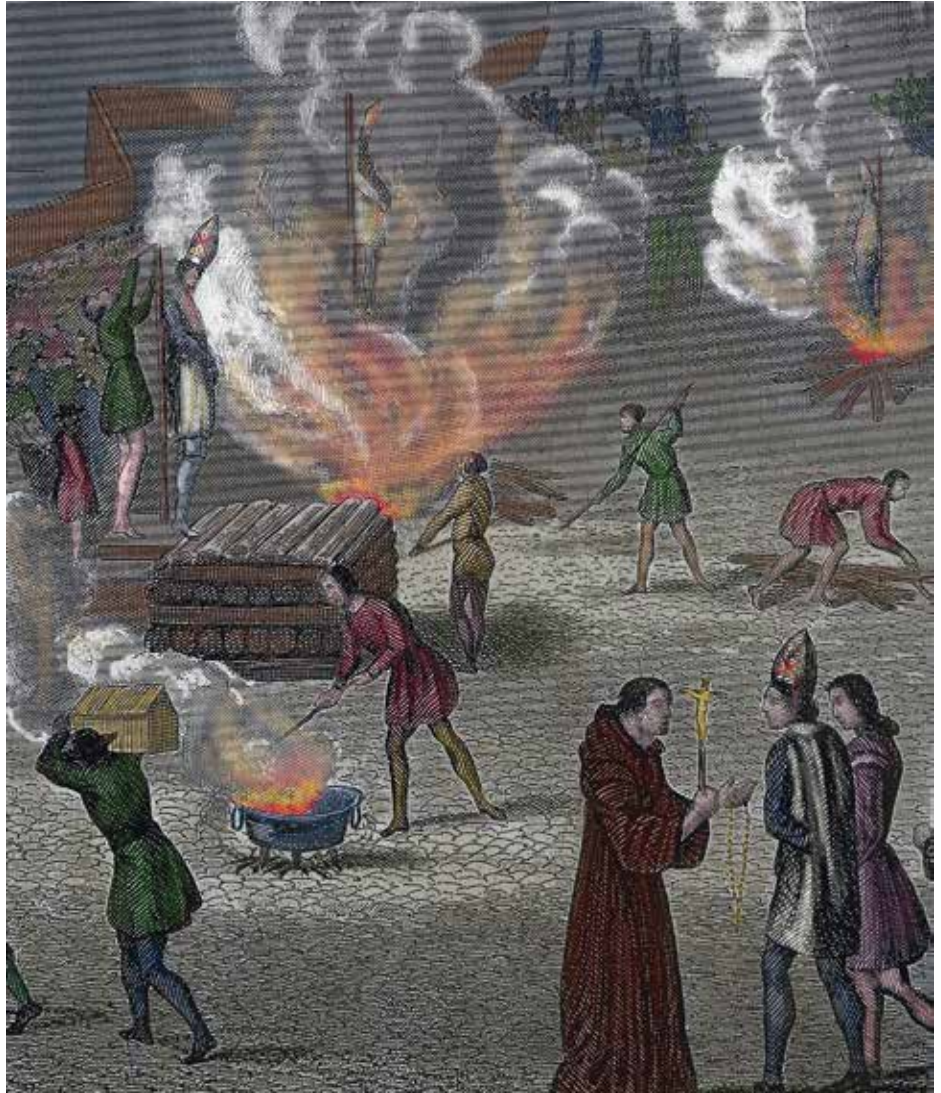
regarding the deeds or characters of violent criminals. Moreover, whenever one party to a debate dismisses the ethical concerns of the other side as "sentimental," it is usually an indication of the former's inferior moral imagination. And in the context of this discussion it is particularly revealing. To cultivate pity (or at least concern) for those who deserve no pity—even those justly condemned of monstrous evils—is not sentimentality but charity, the chief of all Christian virtues. It is a hard discipline, and usually evidence of a genuinely diligent conscience. It is also an extremely valuable intellectual hygiene. Compassion is a philosophical virtue, one that makes it possible to grasp truths invisible to the morally obtuse. The limits of moral imagination are also the limits of the capacity to reason well.

Feser and Bessette approach their topic from a variety of angles, but they are obviously on familiar ground only when they frame the issue in terms of natural law. And here at least they can presume that most believing Catholics will accept the general principle on which their arguments rely: that there exists an essential consonance between the natural and moral orders, inasmuch as both proceed from and manifest a single divine source of



rational truth. But, as is often the case when natural-law reasoning is asked to bear more weight than it can, the arguments Feser and Besette make are mostly blank assertions masquerading as deductions of logic; they are precisely as persuasive or unpersuasive as the reader wants them to be. This is inevitable. Nature and natural reason may quite plausibly indicate a certain set of rational prohibitions, and beyond that a smaller set of rational responsibilities. But at the tertiary level of moral reasoning—that of assigning penalties for misdeeds—nature provides no scale of calculation except “common sense,” which is largely worthless. Thus, Feser and Besette try to argue for certain natural goods accomplished by the principle of punishment as such, and then argue for the specific punishment of execution on the basis of a commonsensical principle of proportionality. It is all quite unconvincing.

**B**ut even if their reasoning were sound, it would be utterly irrelevant to a Christian view of reality. Let us grant, for argument’s sake, that the death penalty is indeed a just and proportionate response to willful murder. So what? That has never been the issue for Christians, for the simple reason that the Gospel does not admit the authority of proportional justice, as either a private or a public good. The whole of the Sermon on the Mount, for instance, is a shocking subversion of the entire idea. Christ repeatedly and explicitly forbids the application of such punishment, even when (as in the case of the adulterous woman) this means contradicting the explicit commands of the Law of Moses regarding public order and divinely ordained retribution. According to Paul, all who sin stand under a just sentence of death, but that sentence has been rescinded purely out of the unmerited grace of divine mercy. This is because the *full* wrath of the Law has been exhausted by Christ’s loving surrender to the Cross. Again and again, the New Testament demands of Christians that they exercise limitless forgiveness, no matter how grievous the wrong, even in legal and public settings. And it insists that, for the Christian, mercy always triumphs over judgment. In a very real sense, Christian morality is nothing but the conquest of proportional justice by the disproportion of divine love.



*A nineteenth-century engraving of an auto-da-fé*

So Feser and Besette need to explain, before all else, why they imagine that Christians have any vested interest in the naturally just retribution for sin.

When they attempt to do this, however, they are wholly defeated by their lack of biblical and theological sophistication. I do not mean that they are merely unacquainted with certain *recherché* hermeneutical or dogmatic theories; I mean that they seem not even to be aware of the theology of the Apostle Paul. They appear not to know how fraught with difficulties and paradoxes the whole question of law, justice, penalty, and forgiveness is in the New Testament and early Christian thought.

Perhaps if they had availed themselves of the work of biblical scholars, rather than incessantly quoting the opinions of commentators no more aware of the texts’ ambiguities (and language) than they themselves are, they might at least have tempered the reckless assurance of their readings. At least, they might have avoided overly buoyant claims for notoriously dangerous verses—such as Genesis 9:6: “Whoso

sheds the blood of man, by man shall his blood be shed; for God made man in his own image” (Revised Standard Version). Admittedly, this seems quite precise, but only if one neglects to quote the immediately preceding verses: “Every moving thing that lives shall be food for you.... Only you shall not eat flesh with its life, that is, its blood. For your lifeblood I will surely require a reckoning; of every beast I will require it and of man; of every man’s brother I will require the life of man” (RSV). It might, after all, seem to undercut the universal authority of a literal reading of the Noahide laws to take note of the equally firm dietary prescriptions included among them (I suspect that neither Feser or Bessette really believes that he imperils his soul by eating his roast beef *au jus*), or of the divine proprietary cultic claim on blood underpinning them. Feser and Bessette also call on Exodus 21 and Deuteronomy 19, but naturally they make no mention of, say, Leviticus 20, with its list of incredibly trivial capital crimes. But, once again, who cares? Jewish tradition always enfolded the Noahide prescriptions into the Law, as that small portion thereof of which gentiles were capable; and it is the wrath of the Law as a whole that is, according to Paul, set aside—even conquered—by Christ. As Paul says in Galatians, the Law is inherently defective, having always been communicated only by an angel, and then through a mere human intermediary.

**I**t is when Feser and Bessette turn their eyes to the New Testament that their argument goes disastrously awry. Their principal response to Christ’s injunctions to unconditional forgiveness and against retaliation and judgment is simply to argue that he is speaking only of private rather than public morality. But such a distinction would have been wholly unintelligible in the context of first-century Judaea; Christ’s constant challenges were to the traditional applications of the Law, in which the personal, social, and jurisprudential were inseparable. As for the very clear rejection of proportional justice in the Sermon on the Mount, Feser and Bessette’s riposte is blandly to note that “Christ said in the very same sermon...that he had come ‘not to abolish the law and the prophets...but to fulfill them.’” They appear wholly unaware of the “redemptive irony” in Christ’s legal pronouncements—how he repeatedly “fulfills” the Law precisely by negating the literal understanding of its prohibitions and punishments.

**Their principal response to Christ’s injunctions to unconditional forgiveness and against retaliation and judgment is simply to argue that he is speaking only of private rather than public morality. But such a distinction would have been wholly unintelligible in the context of first-century Judaea; Christ’s constant challenges were to the traditional applications of the Law, in which the personal, social, and jurisprudential were inseparable.**

And then there is Romans 13:1–7. It is amazing how much is often made of this really rather bland passage. It says very little, and in the original Greek far less than Feser and Bessette think. According to them, Paul’s words have been “traditionally understood as a straightforward affirmation of the right of the state to execute criminals.” This is false (despite

the several misrepresentations of patristic sources they later produce). Even if it were true, however, it would constitute nothing more than an unfortunately prevalent error. The passage almost certainly says nothing about capital punishment at all. Feser and Bessette assume that when Paul writes that “[power] does not bear the sword in vain,” he is speaking of something like the Roman *ius gladii*, a provincial governor’s limited authority for pronouncing a death sentence. But the Greek word usually translated as “sword” in this passage is μάχαιρα, which was the name for a large dagger or short sword generally carried at the waist in a μάχαιοδέτης, a leather

belt. Now, it is true that such a blade could be used to put someone to death; according to Acts 12, that was the means by which Herod had James the brother of Jesus killed. And Paul probably did use the word as a vague term for any sword. But, as a figure for the state’s power to kill, one would properly speak of “τὸ ξίφος”—“the sword”—wielded by an executioner. Thus, for example, Philostratus, when speaking of a magistrate empowered to pronounce the death sentence, describes him as “a judge bearing the sword,” δικάστον τὸ ξίφος ἔχοντος (*Vitae Sophistorum* I.25.31). Again, when Philostratus wants to indicate that Tigellinos possessed the same remit, he says that “Nero’s sword was under his power”: “ὑπὸ ᾧ τὸ ξίφος ἦν τοῦ Νέρωνος” (*Vita Apollonii* IV.42). When, by contrast, Paul speaks of the power that “bears the sword” (τὴν μάχαιραν φορεῖ), the phrase almost certainly refers to a μάχαιοφόρος—a word that usually meant a soldier but could also refer to a military policeman, civil guard, or taxation enforcement officer. This also explains the phrase “οὐ...εἰς ἧ” (“not in vain”—or, better, “not as a vanity”). It is rather as if a modern writer were to say, “A policeman doesn’t carry a gun just for show (so, if you create disorder, do not be surprised if he uses it).” Obviously, the force used by civil authority can be lethal; but that is something quite different from capital punishment. Knowing as we do from Suetonius of the expulsion of Jews from Rome by Claudius in response to the “Chrestus” riots, and



from Tacitus of the public disorder in Rome over taxes under Nero, it is not difficult to imagine the sort of recent events to which Paul was reacting. And yet even that does not matter much. Whatever Paul was referring to, this passage has *absolutely* no prescriptive content when it comes to how Christians should govern society (a possibility that never even occurred to Paul). So, yes, God may have providentially used the powers ceded to the pagan authorities of the ancient world to discourage sin, but that has no bearing on the question of how Christians should conduct themselves in positions of authority. And no one in the early church imagined that it did.

**T**his brings me to Feser and Bessette's treatment of the Church Fathers. It is painfully obvious that neither of them bothered to read the patristic texts they cite; they merely went searching for anything that looked like a proof text, no matter how tenuous or fragmentary, and without paying even cursory attention to context. They claim, for instance, that in the *Contra Celsum* Origen affirmed the right of the state to execute criminals, but when one consults the passage they cite one finds nothing more than a rueful acknowledgement of the *power* of the state to punish crime with force. The same is true of their citation from Gregory of Nazianzus. They also treat an elliptical turn of phrase in Athenagoras as a declaration of the validity of capital punishment rather than, as is actually the case, a mere impartial recognition of its reality. Perhaps the greatest howler is a quotation they extract from Origen's fourteenth homily on Leviticus concerning the way in which certain sins might be absolved by penal death. They fail to notice that Origen's tortured reflections on the literal reading of the seemingly bizarre list of capital crimes in Leviticus 20 is prompted by his certainty that capital punishment is forbidden by the law of Christ. In fact, even when Feser and Bessette notice in passing that the Fathers they mention all seem to advise against use of the death penalty, they fail to grasp that this is not merely a matter of personal predilection. Once again, the question of whether the death penalty is in some sense "just" is wholly irrelevant in the context of Christian belief. As far as the Fathers were concerned, all of us *merit* death. This does not mean that they believed Christians are permitted to impose such a penalty.

The general view of the early Church Fathers was essentially that of Ambrose: the Sermon on the Mount's prohibitions of retaliation are absolutely binding on Christians, in both the private and the public spheres, for on the cross Christ at once perfected the refusal of violence and exhausted the Law's wrath. It is simply a fact of history that the more or less ubiquitous conviction of the earliest Christians—those whose communities most immediately arose from the church of the Apostles—was that Christ's command not to judge others was more than a mere prohibition of private prejudice. For this reason, Christians were not

supposed to serve as soldiers or magistrates. Gibbon quite accurately described the pagan view of the Christians' refusal to serve as an "indolent" and "even criminal" dereliction, which could be ascribed only to "pusillanimity" on their part (a judgment that Gibbon plainly shared). According to the ancient document called the *Apostolic Tradition*, no one intending to become a soldier could be received into the church, and those who had been converted while already in the army were forbidden to carry out even a properly pronounced order of execution. Arnobius clearly stated that Christians were not allowed to impose the death penalty at all, even when it was perfectly just. Athenagoras stated that the killing even of those guilty of capital offenses must be repugnant to Christians, as they are obliged to view all killing of humans as a pollution of the soul. Cyprian too said that Christians believe that the innocent may never slay the guilty. Tertullian not only repeatedly asserted that Christians must not kill other humans for any reason, but also claimed that when Christ disarmed Peter in Gethsemane he effectively stripped all soldiers of their arms, and numbered the office of executioner among occupations deserving of damnation. Origen unequivocally stated that the law of Christ forbids all killing, and opined that God providentially allowed the fall of the Jewish kingdom in order to end the practice of capital punishment among his people. True, in later centuries, under a Christian empire, the greatest of the Church Fathers acknowledged that the state had the *right* or *power* to sentence men to death; yet they repeatedly entreated the authorities to refrain from doing so, and lavishly praised them when they did refrain, because they still believed the use of capital punishment to be wrong in principle for Christians.

**F**eser and Bessette are on firmer ground, naturally, when they shift their attention from the patristic epochs to the late Middle Ages, but this serves more to weaken than to substantiate their case. For one thing, it is a necessarily abrupt shift, omitting mention of the roughly eight intervening centuries precisely because they offer so little in the way of good evidence for their position. But they employ even the late medieval material quite indiscriminately. They are perfectly content to draw support from arguments made in support of the execution of heretics—such as those of Thomas Aquinas, who also affirmed the propriety of executing thieves and counterfeiters. They even take Innocent III's decision to permit the execution of unregenerate Waldensians as proof that the legitimacy of capital punishment is "*a matter of Catholic orthodoxy*" (emphasis theirs). They also draw support from Leo X's declaration in *Exsurge domine* (1520) that the burning of heretics is in keeping with the will of the Holy Spirit, and from the brutal penal practices of the Papal States in the nineteenth century. Quite apart from their apparent ignorance of how very little weight the Catholic magisterium accords such precedents, it is amazing how much of their

case rests upon the legitimacy of the most barbaric evils perpetrated during what all morally sane Catholics recognize as a period of profound and tragic institutional decadence.

Perhaps, though, one needs to ask: Do Feser and Bessette believe it theologically correct to burn heretics? Does that accord, in their minds, with all their earlier talk of proportional justice? If not, then no sound principle can be abstracted from arguments in defense of an inherently wicked practice; all of it would be fruit of the poisoned tree. But if they do believe it right to burn heretics, then they have essentially excused themselves from civilized Christian discourse. After all, the history of “holy murder” within Christian culture is well established. In the earliest centuries of the church, the killing of religious dissidents was rightly regarded by Christians as an abominable pagan practice. When a Roman emperor (or pretender) executed the Spanish bishop Priscillian for heresy in 385, Christians as eminent as St. Martin of Tours and St. Ambrose of Milan condemned it as a return to heathen brutality. Throughout the so-called “Dark Ages,” in fact, the approved penalty for obdurate heresy was simply excommunication. True, in the twelfth and thirteenth centuries heresy again became a capital crime throughout Western Europe; but even then, it was the state rather than the church that led the way. When the Holy Roman Emperor Henry III hanged a number of Cathars in 1051, he was reprimanded by the bishop in Liège. Admittedly, by the time his later successor Frederick II (1194–1250) ordered the surrender of all convicted heretics to the secular arm to be burned, the institutional church contemptibly complied. And the Papal States, as Feser and Bessette gleefully note, were executing a wide variety of criminals well into the nineteenth century. All of which is quite a tragic betrayal of Christian principles, as every pope in living memory has been happy to concede.

It is not clear why Feser and Bessette imagine that the past legal practices of the church or its political adjuncts oblige modern Catholics to accept whatever rationales, however loathsome, those practices might have embodied. None of them rested on dogmatic principles. And, anyway, if Newman was right—and believing Catholics had better hope he was, for the sake of the intelligibility of their faith—it is not only doctrine but also the church’s understanding of its teachings that is clarified over time by the Spirit. There may be slight missteps, of course, but the general view of

development tacitly taken by the magisterium is that there are no violent retreats from clearly stated new discoveries; there is only a relentless narrowing and intensification of focus. This suggests, among other things, that the teachings of the magisterium under the current pontificate are probably more trustworthy than those under the pontificate of, say, Leo X.

Feser and Bessette are clearly struggling against the inexorable course magisterial pronouncements on this matter have been taking for decades. They twist and turn in every direction trying to evade or relativize the current teachings of the Catholic Church, and acknowledge the authority of those teachings only with extreme qualifications. They do their damndest to suggest that all of it constitutes no more than a prudential judgment regarding current social circumstances. To no avail. Admittedly, the Catholic Church has never committed itself doctrinally to the abolition of the death penalty, and it is true that magisterial interpretations of doctrine are somewhat fluid and of less than dogmatic authority. Still, in the eyes of the Catholic Church, the explicit teaching of the magisterium on matters of faith and morals is universally binding on the consciences of the faithful. And as regards this question that teaching is clearly stated in the Catechism: the death penalty may be permissible solely “if this is the only possible way of effectively defending human

lives against the unjust aggressor,” though today, given the facilities available to the state for detaining criminals, such cases “are very rare, if not practically nonexistent” (2267). That is quite unambiguous. The *only* time execution may be acceptable is when it is otherwise impossible to prevent a criminal from killing again. That means that all the other arguments advanced by Feser and Bessette have already been decisively ruled out by the magisterium as morally insufficient; and this is not going to change. If any position, then, is to be regarded as contrary to Catholic orthodoxy, it is theirs.

**A**ll that remains standing among the ruins left behind by this book’s collision with the Catechism is the one practical argument the magisterium still permits—that perhaps, without the imposition of the death penalty in certain cases, innocent lives will be endangered. Alas, what Feser and Bessette cannot establish is that, even were that true, the number of the

**It is amazing how much of Feser and Bessette’s case rests upon the legitimacy of the most barbaric evils perpetrated during what all morally sane Catholics recognize as a period of profound and tragic institutional decadence.**



innocent imperiled by the abolition of the death penalty would be greater than the number imperiled by its exercise. They make all the standard arguments for how the death penalty discourages violent crime, and offer the usual sorts of statistics and “commonsensical” arguments used to support this claim. Unfortunately, anyone who has followed debates on this issue over the years knows that there are statistics and commonsensical arguments for exactly the opposite position that are at least as convincing. It might help Feser and Bessette’s case if murder rates in, say, Stockholm were to exceed those in Dallas, but as yet that has not happened, and none of the evidence they do have at their disposal is especially compelling. That leaves only the concern that violent criminals, if left alive, might escape confinement. This has occasionally happened, they argue, and so concern for public safety dictates that the dangerous murderers be put down. Since, however, it is always possible to improve methods of incarceration and the transport of prisoners, a less sanguinary solution is within reach.

The most disturbing aspect of this part of Feser and Bessette’s argument is their response to the issue of false convictions. They acknowledge that mistaken verdicts will on occasion be handed down in capital cases, but think the margin of error slight enough to be acceptable. After all, they reason, we drive cars and vaccinate our children, even though both practices inevitably claim a negligible number of innocent victims. These analogies are ridiculous for what should be obvious reasons—the vastly differing statistical orders of magnitude, or the element of human intentionality involved, or the practicability of available alternatives, and so forth. And then too there is the inconvenient proof amassed in recent years of just how high the rate of jurisprudential error tends to be. DNA testing has repeatedly proved that a great many cases in which the evidence had appeared irrefutable (some involving numerous eyewitness testimonies) have resulted in convictions of the innocent. We may therefore anticipate that, especially in cases where no DNA evidence is collected, there will continue to be miscarriages of justice in quantities far greater than the vanishingly small number of violent criminals who might escape confinement, especially as penal technology continues to evolve.

One can drag such debates out interminably, but all of them remain largely irrelevant to the essential question. Even if it would make the world a much safer place to kill off as many violent criminals as possible—and I think we can assume that it would—that still would not mean that it is something Christians are permitted to do. On the whole, the Gospel is probably not a very good formula for protecting public safety. And, really, the question of what Christian commitment entails is not one that Feser and Bessette appear to be well equipped to adjudicate.

The most appalling aspect of this book is finally not its shoddy reasoning or theological ignorance, but its sheer moral coarseness. For example, Feser and Bessette twice adduce the career of Giovanni Battista Bugatti—the official executioner

of the Papal States who from 1796 to 1865 executed 516 convicted criminals, by decapitating them with an axe or a guillotine, or slitting their throats, or crushing their heads with a mallet, or having them drawn and quartered—as some sort of proof of the Catholic Church’s commitment to the essential justice of the death penalty. On neither occasion do they express the slightest alarm at, or disapproval of, either the number or the savagery of these killings. This is typical of the entire tone of the book: every page exudes an atmosphere of almost numbing callousness. There are times when a faint touch of false tenderness on the authors’ part would have been, at least, decorous.

**I**n the end, Feser and Bessette offer a very odd and unsettling picture of Christianity, rather like a familiar and beautiful painting monstrously distorted in a carnival mirror—the lovely rendered hideous, the exquisite grotesque. But perhaps this is the burden of Christian history’s contradictions. We know how all this happened, after all. In the earliest days of the faith, in those communities in which the long echo of the voice of the apostolic church was still audible, and through it the longer echo of the voice of Christ, baptized Christians understood themselves as having been called to a form of life radically unlike that of the fallen cosmos. They belonged to a kingdom not of this world, and were absolutely forbidden to take part in the orders of force by which the powers and principalities exercise their sway. They were required now to live by a law of charity so uncompromising that it might lead to their deaths and the deaths of many others. But that prolonged moment of apocalyptic liberty from the violence of history gradually faded. Christendom arose and ramified and assumed gigantic dimensions. Over the centuries the church and the fallen order from which it had initially offered an escape became inseparably intertwined, with consequences both good and ill. Then came Christendom’s collapse, again for both good and ill. I suppose it is inevitable that there should now be traditionalists who look back yearningly not so much to the cultural prevalence of Christian faith, nor even to the genuinely glorious achievements of Christian civilization, but rather to that grand and mighty institutional accommodation between Christ’s and Caesar’s realms, along with everything about it that was most inimical to the Gospel. If nothing else, a book of this sort has the salutary effect of reminding us just how pernicious that kind of nostalgia truly is. Happily, it too must fade. As the book of Hebrews says, the word of God is sharper than any sword, sharp enough to separate soul and spirit. Perhaps in the modern age it has been that word, operating secretly, that has so painfully but redemptively separated faith in Christ from the instruments of worldly power. Would that the separation were already complete. It may be that the last vestiges of Christendom will have to vanish entirely from human hearts before the long echo of Christ’s voice will become audible again in all its purity. ■

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# The Böckenförde Paradox

## *What a German Jurist Can Teach American Catholics*

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Michael J. Hollerich

In 1961 a young German law professor named Ernst-Wolfgang Böckenförde wrote a devastating analysis of German Catholicism in the epochal year of 1933. After years of episcopal condemnations of Nazi ideology, the German bishops had reversed themselves two months after Hitler's legal coming to power and had endorsed cooperation with the new regime. At the same time the Catholic Church's political voice, the Center Party, provided the parliamentary votes to give Hitler the two-thirds majority in the Reichstag necessary for suspending the constitution and granting power to rule by decree. (Civil liberties had already been suspended a month earlier after the burning of the Reichstag.) And in July the Vatican signed the controversial Concordat with the Third Reich. Böckenförde argued that Catholicism's rapprochement with the Nazis, which in some quarters became enthusiastic endorsement, could only be fully explained in terms of an ingrained Catholic opposition to pluralistic democracy and secularized modernity. A certain affinity for authoritarian solutions disposed many Catholics to see what they wanted to see in National Socialism, even if they came to regret it.

Böckenförde was advised against publishing the article for fear of the damage it might do to a promising academic career. He did so anyway, in the pages of the influential German Catholic monthly *Hochland*. In the words of a contemporary, it produced a real hornets' nest. "German Catholicism in 1933" drew instant international attention, and an English translation was rushed into print in the American Catholic journal *Cross Currents*. In Germany it provoked Catholic authorities to establish the Kommission für Zeitgeschichte (Commission for Contemporary History) to oversee publication of documents and scholarly research into the whole era of the two world wars and the dictatorship.

In the event, the brash young scholar did not get stung. Böckenförde, born in 1930 and now eighty-seven years old, went on to have a long and distinguished career as a scholar, judge, and respected public intellectual. The highlight of his career was his term as a judge on the Constitutional

Court of the Federal Republic. (Judges serve for limited terms, an admirable practice that Americans must envy, since our extreme polarization—and litigiousness—make lifetime appointments to the Supreme Court so apocalyptically decisive that all other political considerations are cast to the side in presidential elections.) Böckenförde's term (1983–1996) coincided with German unification and saw landmark decisions on abortion and citizenship, the first necessitated by the need to reconcile lax East German abortion law with West German prohibition, the latter by the early onset of anxiety over the prospect of European unification and open borders.

Böckenförde is also a Roman Catholic and one of Germany's most prominent Catholic lay intellectuals, but he is not well known in the English-speaking world. That is about to change with the publication by Oxford University Press of two volumes of his papers and articles. I believe that American Catholics may find him a stimulating voice that bridges some of the current divisions in our church and our politics, especially where the neuralgic subject of law and religion is concerned.

Let me begin with a comparison with Judge John T. Noonan Jr., who passed away in April at the age of ninety. Noonan was a figure of truly exceptional stature, with original and substantive books and articles on a host of important subjects. Born only four years apart, he and Böckenförde have a great deal in common. Both were law professors and federal judges, possessed of a keen commitment to history's importance in illuminating both law and religious doctrine and practice. Both enjoyed standing as Catholic laymen whose independent voices were respected (though not always endorsed) by Catholic authorities. Both were passionately loyal to the way their respective countries have dealt with the place of Catholicism and religion in general in a pluralistic liberal democracy. Both took principled and independent stands preserving the integrity of the law, while at the same time defending the institutional life and public involvement of the Catholic Church (and of course of other religious bodies). Both denied that the state can impose a worldview on its citizens. At the

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Ernst-Wolfgang Böckenförde in 1989

same time, both doubted that law could function without some sort of basis in morality, though they construed the relationship in very different ways.

The differences between the two men are largely due to the differences between the place that Catholicism has in the history and governance of Germany and the place it has in the United States. Here, the religion clauses of the First Amendment prohibit an established state religion and protect religion's free exercise. Jurisprudence has swung back and forth between interpreting the First Amendment to require strict governmental neutrality regarding religion and seeing it as permitting some measure of accommodation. Ever since Germany's first experiment with democracy after World War I, the German constitution has also rejected a state religion and guarantees religious freedom, but legalizes a measure of accommodation that has been inconceivable in the United States ever since James Madison and his allies in the Virginia House of Burgesses pushed through Jefferson's Statute of Religious Freedom over the opposition of Patrick Henry and the advocates of state support for religion. The religious clauses of the Weimar Constitution, for instance, guaranteed state-collected taxes for the churches and supported religious education at various levels and in various settings, clauses that were preserved—over vociferous opposition—after World War II, when West Germany in 1949 adopted its new democratic constitution, the Basic Law (*Grundgesetz*).

From an American perspective—and also in the eyes of more secular-minded observers in Germany—German Catholicism looks in practice to be a quasi-established church, particularly so in the decades before reunification with the more secularized and historically Protestant eastern regions

diluted Catholicism's dominance in West Germany. There is also a long tradition of lay independence in German Catholicism that American Catholics have only acquired since the Second Vatican Council. (Böckenförde, for example, was for a long time a member of the Central Committee of German Catholics, a large lay organization that has no true American Catholic counterpart.) Similarly, the German hierarchy is historically freer of Roman control than the American episcopate, which was thoroughly Romanized at the beginning of the twentieth century. On the other hand, Noonan's education spared him the sometimes stifling parochialism of New England Catholicism—"Catholic but not churchified" is how early biographer Kevin Starr described his upbringing. He never attended a Catholic school (apart from after-hours religious education in privileged circumstances) until he started graduate study in philosophy at the Catholic University of America in 1947.

Noonan's work covered a host of fundamental moral issues and their relationship to law, both civil law and canon law—usury, bribery, contraception, abortion, slavery, and marriage and divorce, for example. He also wrote historical and legal works on religious liberty in the United States, and yet other books on the way law is applied in judicial decisions. He wrote with enviable grace and clarity, reflecting his literary and humanistic education. Böckenförde has favored the form of articles and essays rather than books and monographs. Besides writing on specific legal issues and judicial decisions, he has shown a lifelong concern with the nature and functioning of the modern state and of constitutional theory. He tilts toward political theory and the philosophical foundations of the state as favorite subjects, always with a historical sensitivity.

**B**öckenförde was born into a large middle-class Catholic family in west central Germany. He first studied history and law at the universities of Münster and Munich, passing the law exam in 1953, and then completed doctoral work in law in 1960 at Munich. He completed his second doctorate, the “habilitation” thesis that enables a German university career, in 1964. He taught as professor of public law, constitutional and legal history, and philosophy of law at Heidelberg, Bielefeld, and Freiburg im Breisgau, until his retirement in 1995. Politically he has stood on the left as a member of the Social Democratic Party (SPD), whereas the favored Catholic political vehicle has been the conservative Christian Democratic Union (CDU), the reconstituted and renamed version of what had been the Center Party. His entry into the SPD in 1967 was a declaration of intellectual and political independence. A constant in his thinking over fifty years has been his conviction that the liberal freedoms of the democratic state require active social supports if they are to be real and not merely nominal rights—that is evident as recently as his 2009 article during the world financial crisis, on “the roots of capitalism’s sickness.”

His legal and constitutional thinking was shaped informally by his long-standing relationship with Carl Schmitt (1888–1985), the brilliant but controversial jurist and political theoretician whose disgraceful Nazi dalliance ended his professorial career after 1945. Schmitt was a conservative thinker with fascist inclinations, and his concrete political views and doubts about democracy could not be more different from Böckenförde. The two men do however share a concern for the legitimacy and successful functioning of the state in a modern, secularized context, and it is in the area of constitutional theory that Böckenförde (always a little sensitive about his links with Schmitt) has located Schmitt’s main influence on him.

Böckenförde is probably best known for a celebrated paper published fifty years ago, “The Origin of the State as a Process of Secularization.” There he formulated what has come to be known as “the Böckenförde Paradox,” according to which “the liberal, secularized state lives on the basis of assumptions that it itself cannot guarantee. That is the great gamble (*Wagnis*) it has made, for the sake of liberty.” The thesis is that the secular state was forced to cut itself

loose from traditional means of legitimation, and from religious legitimation above all, for the sake of keeping the peace among its citizens, whose views on ultimate matters could embrace a range of religious choices or no religion at all. If that formula sounds familiar, it’s because Americans have been taught a version of it as the Whig history, so to speak, of the First Amendment (all those churches in the colonies that gave up trying to dominate one another and accepted federal neutralization). In the past generation or so, a recurrent theme among Christian conservatives in the United States has been that the liberal state has *lost* that gamble, having hollowed out its own moral infrastructure by pushing religion out of the public square.

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Whether that it is true or not—or even whether the state has really been secularized—can be debated. On the one hand, Böckenförde has been emphatic ever since the 1950s, years before Vatican II’s Declaration of Religious Freedom, that the era of the Christian state is over. He insists that the state exists first of all to keep the peace, and that in what Germans call a *Rechtsstaat* or “rule of law” state, all that the state can demand of its citizens is agreement to obey the rules that govern democratic life. It cannot expect them to adopt a worldview or complete system of morality that exists as a justification or grounding for the state.

All we can ask, for example, of Muslim newcomers is that they comply with existing laws, regardless of what they may think privately. Laws govern actions, not convictions or attitudes.

That type of governmental self-denial also prohibits imposing the doctrine of natural law as an entailment of the order of the state. The consequences of failing to honor the distinction between morality and law are “freedom-destroying and totalitarian. The right of truth and of those who believe they possess it—and the means of enforcement—take the place of the right and freedom of the person.” (I don’t know what he thinks about former Pope Benedict’s denunciation of a supposed “dictatorship of relativism,” but I suspect he would find the charge incomprehensible.) Böckenförde’s skepticism about natural law arises from the way the Catholic Church—which arrogates to itself a privileged status as the interpreter of the natural law—in Germany has used natural law as a protective shield for specifically Catholic concerns, such as control of education,



at the expense of other political considerations. That had been part of Böckenförde's analysis of the political blinders worn by German Catholic leaders in 1933. And he saw it in operation again after World War II, when Catholic bishops balked on accepting the new democratic constitution without guarantees over Catholic schools.

On the other hand, Böckenförde is also aware that an "ethos" of democracy is necessary in order to secure respect for liberty and equality and the principle of majority rule. There must be some measure of felt commonality to ensure the successful integration of masses of diverse citizens. He has spoken of the need for a "relative homogeneity" in a pluralistic democracy. In Germany, of course, such language raises anxiety. He has hastened to add, borrowing a phrase from an older liberal legal thinker, Hermann Heller (1891–1933), that this relative homogeneity is ethical, not ethnic. (Schmitt had actually insisted that democracy required *ethnic* homogeneity—we know where that leads.) Religion can nourish such an ethos, but other sources of conviction are also possible. Yet it has to come from somewhere. Hence the paradox.

**B**öckenförde is not opposed to natural-law doctrine per se. In a 2004 lecture, he said that natural law has a role to play in thinking about human dignity. Its proper place is not to serve as valid law in itself but as a "pressure" on the law, a *Rechtsethik* or "ethic" of law, by which he means that it can be a critical stimulus for evaluating and improving positive law. What does this tell us about his position on abortion? He has consistently argued that the guarantee of the inviolable dignity of the human being in the Basic Law (Article 2, §2) extends to the right to life of the unborn, a right that begins with the moment of conception (not just of implantation, as he had once held). He grounds his position in the wording of the constitution, not in an a priori doctrine of natural law or of personhood. But critics have sometimes accused him of smuggling natural law in through the back door.

At the time of his appointment to the Constitutional Court in 1983, public questions about his Catholic profile led him to take a religious oath to uphold the duties of his appointment as a judge of constitutional law in a religiously neutral secular state. At the same time he resigned his position on the Committee of German Catholics (he also dropped his rights as a party member of the SPD). His justification (the oath was voluntary) was that he considered it a *religious* duty to guarantee his constitutional impartiality. This became acutely relevant in 1992, when the court had to rule on the constitutionality of a law permitting abortion within the first twelve weeks of a pregnancy, after mandatory counseling with a doctor and a three-day delay. The law originated as a compromise after German reunification in 1991, because of the need to reconcile East Germany's permissive legislation on abortion with the West German Criminal Code's prohibition of abortion.

The court took six months to deliberate before rendering a

verdict in May 1993. To general surprise, the court ruled 6-2 (there are eight justices on each of the two "senates" of the Federal Constitutional Court) against the constitutionality of the new law and upheld the West German prohibition. At the same time, however, it ruled that there would be no legal penalty attached to breaking the law, if the counseling requirements were met. Hence the odd result: abortion was still illegal but no penalty was imposed for breaking it—as long as the counseling conditions were met. Because voting is anonymous and the verdict is collective, no one knows Böckenförde's vote. When an interviewer (see below) asked him point blank if he was the person who proposed the novel "illegal but free of penalty" formula, he refused to answer and pointed to the confidentiality of the proceedings.

He may have tipped his hand, however, by submitting what is called a "special opinion" (*Sondervotum*), which a justice is entitled to do if he or she objects to a specific feature of the verdict—not a minority opinion in the American sense, but a qualified and specific dissent. Böckenförde disagreed that it was also unconstitutional to refuse to pay for the procedure—such a refusal was not required by the Basic Law.

Böckenförde has defended the court's verdict as the only way in a deeply divided society to honor both a woman's right to choose with the (to him) inviolable constitutional right to life of the unborn. The crucial circumstance, and one to which he has devoted much thought over the years, was the history of enforcement of the West German prohibition, which turned out to be spotty and rather arbitrary, when it was enforced at all. In his view the inefficacy of the existing law made compromise necessary. A law enforced so haphazardly was bad law measured by the test of social invalidity. He has also said that his position as a judge was different from what it would have been as a legislator: faced with such a law in the Bundestag, he would in conscience have been obliged to vote against it.

There is of course much more to say about this tortuous issue, as deeply divisive in the United States as it is in Germany, and the many other topics on which Böckenförde has written. I have singled this one out partly because I find Böckenförde's work useful in thinking critically about how the American bishops have, for the past several presidential cycles, let a narrow menu of "non-negotiable" issues overrule any other political considerations in how Catholics might form their conscience in voting. For those interested in learning more about Böckenförde, an excellent place to begin is the long biographical interview conducted by Dieter Gosewinkel in 2009–2010 and published in 2011. It is now in English in the first volume of the new Oxford Press publication, *Constitutional and Political Theory: Selected Writings, Ernst-Wolfgang Böckenförde*, edited by Mirjam Künkler and Tine Stein. A second volume of papers dealing more directly with religion is forthcoming. But the moral and ecclesiastical issues that may especially interest *Commonweal* readers are already front and center in the Gosewinkel interview. I recommend it. ■

# Christmas Critics

Sarah Ruden

During this trying year of our national life, I've longed for the rhyming books whose pages I grabbed at when they were first read to me. Sometimes an almost physical hunger comes over me for Robert Louis Stevenson's *A Child's Garden of Verses* (Chronicle Books, \$19.99, 124 pp.), which first appeared in 1885 under the title *Penny Whistles*. In these poems, darkness falls; it is time for tea; the streetlamps are lit. A shadow moves in the sunlight but is absent at dawn. The nursemaid, a solid block of silent authority, is visible or expected. The garden, a farm, a railway carriage, or a river may open the world. But the child

needs only a few toys, or flowers seen from the ground, or another child as a companion, to fly over vast landscapes or travel the globe. He leaves a toy soldier outdoors through the seasons, hidden in a hole in the lawn, to watch the sky and experience the movements of nature around him; but the child must speak of what the soldier cannot.

This is atmosphere unique to Stevenson, who was an invalid from a young age and voyaged to the South Seas near the end of his short life. Other authors who "don't grow up" tend to be pretty obnoxious, but this one, entertaining himself in his sick bed with toys and later with words, has a strangely pure appeal, as if he has been lured away from self-pity and self-dramatizing through his own imaginative power. His "Where

Go the Boats?" has been set to music and is a lullaby I remember in its entirety. It ends:

On goes the river  
And out past the mill,  
Away down the valley,  
Away down the hill.

Away down the river,  
A hundred miles or more,  
Other little children  
Shall bring my boats ashore.

Among other instant-classic poetry books for young children is Shel Silverstein's *Where the Sidewalk Ends* (HarperCollins, \$19.99, 176 pp.). It came out too late for me, but when I was babysitting I was impressed by how one group of siblings, assisted by the author's comical line drawings, dramatized certain of the poems with rather shocking emotional realism.

Some of the collection reprises Edward Lear and other nineteenth-century children's nonsense poets:

In the undergrowth  
There dwells a Bloath  
Who feeds upon poets and tea.  
Luckily, I know this about him  
While he knows almost nothing of me!

Another older strain is the didacticism. There are surprisingly close parallels to the famous German collection *Struwwelpeter*. For example, the *Daumenlutscher* or Thumbsucker has the too-tempting appendages lopped off with scissors by a monstrous tailor; Silverstein warns that a snail living in the nose will bite off a picker's finger. In other verses, horror-story edification is updated. Silverstein's screen-addled Jimmy Jet turns into a TV set himself. ("And now instead of him watching TV / We all sit around watching him.") He is a cousin of Mike Teavee in Roald Dahl's *Charlie and the Chocolate Factory*



Robert Louis Stevenson and His Wife by John Singer Sargent

(1971), who gets shrunken by the machine. Bad things happen, for reasons; it's called storytelling.

There is also some nice parody on smarmy literature and music for children. The Little Blue Engine thinks it can, thinks it can, thinks it can, but crashes onto the rocks at the bottom of the hill. Santa, desperate to deliver the toys on time, has to bribe one holdout reindeer with a magical flea. "And the moral of this yuletide tale / You know as well as me."

I received A. E. Housman's *A Shropshire Lad* (Penguin Classics, \$17, 256 pp.) as a Christmas present when I was fourteen or fifteen, and I had a moony, swoony time with it. Essays about Housman turn up from time to time in magazines like the *Atlantic*, always with an emphasis on repressed sexuality. I wish society had repressed mine. The poet was also a hardworking, brilliant classical scholar, a whip-sharp opponent of academic fatuity, and the best parodist and pastiche writer I know.

Whatever its psychological origins, *A Shropshire Lad* can provide teenagers with a means to sublimate their self-pity, posing, and cheap cynicism (along with the projection of these onto the natural world and civilization) into music and memory. The World War I generation in Britain was massively influenced by the book, and the good effects trailed into the works of writers as diverse as Orwell and Forster.

For young people, literature doesn't have to be "good" in the adult sense; it just has to engage them. In fact, the adult connoisseur's criteria—distance from the very passions written about, challenging experimentation with language and ideas—are likely to put off beginners. Housman's poem titles alone evoke sighs of adult gratitude that the target audience can no longer fit on our laps and share the reading experience: "When the lad for longing sighs," "Look not in my eyes, for fear," "To an Athlete Dying Young," "Oh fair enough are sky and plain," etc. Housman was as exuberantly parodied as he parodied others. No matter. Give it, and they will read. And soon enough their taste will improve.

In 1982, Seamus Heaney (disclosure: he was a teacher and patron of mine) and Ted Hughes, the presiding Irish and English poets of the time, published their ideal anthology for beginning poetry courses and the general public, *The Rattle Bag* (Farrar, Straus and Giroux, \$24.95, 496 pp.). Middlebrow, heavy on rustics, animals, irony, and whimsy, this book is an excellent temptation for anyone who "hates poetry"—teenagers and first-year college students come at the top of my personal list.

The more intimidating poets (Dante, Shakespeare, Pound) are represented by some of their catchier works. From the poets with a directness that lifts you by the scruff of the neck (Blake, Hopkins, Auden), the editors chose some less familiar lyrics, which must broaden many readers' repertoires. Among a lot of crowd-pleasers is G. K. Chesterton's "The Donkey":

When fishes flew and forests walked  
And figs grew upon thorn,  
Some moment when the moon was blood  
Then surely I was born.

With monstrous head and sickening cry  
And ears like errant wings,  
The devil's walking parody  
On all four-footed things.

The tattered outlaw of the earth,  
Of ancient, crooked will;  
Starve, scourge, deride me: I am dumb,  
I keep my secret still.

Fools! For I also had my hour;  
One far fierce hour and sweet:  
There was a shout about my ears,  
And palms before my feet.

There are too many poets' poets, each with multiple poems: Elizabeth Bishop, Hugh MacDiarmid, Miroslav Holub, and others. But I praise the editors who, in the middle of a poetry establishment quite snooty about such projects, gathered together so much that people would simply like.

**Sarah Ruden** has published several books, including, most recently, *The Face of Water: A Translator on Beauty and Meaning in the Bible and a new translation of Augustine's Confessions*.

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## Bria Sandford

**A**s an editor, I'm lucky enough to be paid for doing what I love, but there are times when reading begins to feel like a chore, and when I lose my taste for a good story. I come home from work looking for something that will delight but not daunt a word-weary brain, but everything I pick up feels dull or like a homework assignment.

This year, I found three methods of breaking out of that kind of funk. The first was reading short stories, since they don't require a long attention span. Second, I discovered that reading books about other people's editorial problems was a great way to forget my own. And, finally, books about non-verbal activities such as surfing, shepherding, or even walking made me feel as if I'd taken a vacation from the page.

The most delightful book I read this year falls into the first category. Rivka Galchen's *American Innovations* (Picador, \$15, 192 pp.) charmed me with its just-so-slightly off descriptions of quotidian life. Each story reimagines another famous short story, centering it on a compelling female character, instead of on a man. Nodding to Gogol, the protagonist of the collection's titular story grows a "dorsal breast." Another story, "The Lost Order," tips its cap to "The Secret Life of Walter Mitty," telling of a daydreaming woman who argues with her nagging husband and undertakes a quixotic mission to fulfill a misplaced order for Chinese food.

While it's fun to try to identify the original story, Galchen's collection stands on its own even without the gimmick. Her women are self-effacing, careful, and just a tad too transparent in their attempts not to overshare. "I'm a pretty normal woman, maybe an even extremely normal woman," one protagonist assures us before going on to list the items she saw exit her window under their own steam. "I was at home, not making spaghetti," begins the narrator of another story, reassuring us that, no, she doesn't comfort herself with food while unemployed.



Rivka Galchen

Revealing though not confessional, each woman's story shows her trying to make the best of a bad situation—a hopeless crush, a difficult mother-in-law, an unpleasant party—usually while doing something a bit crazy. Yet it's all rather playful, and for every wince there's a laugh. More often than not, there's a flash of self-recognition, too, the kind that I first experienced as a child when I found friends in books.

In my second category of funk-busting books, Thomas Vinciguerra's *Cast of Characters* (W. W. Norton, \$18.95, 480 pp.) stands out. Through vivid portraits of the *New Yorker's* brilliant and eccentric writers and editors, Vinciguerra chronicles the sparkling and sordid chapters in the magazine's history from its founding through the early Cold War era. There's romance: the story of E. B. and Katharine White's relationship, anecdotes of James Thurber's bizarrely antagonistic relationships with women, and poignant accounts of Wolcott Gibbs's failed marriages. There are feuds, including not only the famous takedown of *Time* magazine's house style ("Backward ran sentences until reeled the mind"), but also stories of more personal quarrels. In response to Walter Winchell's claim that magazine co-founder Harold Ross didn't wear underwear, Ross reportedly stripped off the pair he was wearing and mailed it to him.

The real-life hijinks of Wolcott Gibbs, E. B. and Katherine White, James Thurber, and their many other famed peers delight and horrify, but the book is more than just gossip. It makes Ross's and Gibbs's pleasure in their work contagious and sends me back to my work eager to build something that will last.

Finally, in the category of books-about-tasks-that-employ-gross-motor-skills is *Wainwright on the Pennine Way* (Frances Lincoln, \$25, 224 pp.), Alfred Wainwright's 1985 illustrated guide to the 270-mile walking path from Derbyshire to the Scottish borders. It's meant to be more a reminder of the trail's joys for Pennine alumni than an introductory text, but it also suits well a would-be walker eager to dream of a British walking holiday.

Wainwright guides the reader past sinkholes and across moors, through villages and down into tough terrain. "Nobody has a kind word to say about Featherbed Moss.... But all bad things come to an end," the reader is reminded, as Wainwright describes a particularly difficult bit of the path. Along the way, he comments on the manmade ugliness that spoils some views—"A scene of desolation can be beautiful; a scene of utter devastation is always ugly"—but there's always more beauty ahead, whether in Penyghent's limestone cliffs or along the River Swale's banks. The process of tracing his maps and following the step-by-step descriptions quiets my brain and leaves me nearly as relaxed as if I were marching along myself.

Sometimes I need a real walk, even if it's up Seventh Avenue, not across England, to clear my mind. For nights that are too stormy, though, or for days when I'm too lazy, I'm grateful for writing that refreshes. And who knows? I've yet to write book-friends for lonely children, and no billionaires have offered to fund my magazine, but I'm eyeing cheap flights to London and looking for good walking shoes.

**Bria Sandford** is a senior editor at Penguin Random House.



## Mollie Wilson O'Reilly

Some of my favorite Christmas stories come from the “Little House Books,” Laura Ingalls Wilder’s multi-volume chronicle of her childhood on the American frontier in the decades after the Civil War. Each book in the series builds to a memorable Yuletide, celebrated in conditions that are sometimes cozy and sometimes fraught with worry. In *Little House in the Big Woods*, Laura’s eyes shine as she cradles her very own rag doll; in *On the Banks of Plum Creek*, she sees her first Christmas tree in a mission church on the Minnesota prairie. The chapter from *Little House on the Prairie* titled “Mr. Edwards Meets Santa Claus” is a masterpiece of suspense, warmth, and joy. I remember comparing my childhood Christmas-morning bounty with Laura’s meager stockingful of gifts and feeling slightly uneasy. (“Think of having a whole penny for your very own,” Wilder deadpans. “Think of having a cup and a cake and a stick of candy and a penny. There never had been such a Christmas.”) Reading it with my children made me appreciate how sensitively Ma and Pa’s anxiety over Santa’s likely failure to deliver is conveyed through Laura’s innocent eyes.

The Little House Books make an excellent gift for any grade-school child, whether in tried-and-true paperback format (HarperCollins sells a boxed set of nine paperbacks for \$71.97) or in the handsome new hardcover editions of the first three books, *Little House in the Big Woods* (HarperCollins, \$12.99, 224 pp.), *Little House on the Prairie* (336 pp.), and *Farmer Boy* (368 pp.). These newer editions, also available as a boxed set, have heirloom-style cover art, no interior illustrations, and new forewords by an assortment of famous names. (The only one I read, by former librarian and first lady Laura Bush, didn’t add much.) Wilder’s text needs no dressing up, but these books have the look of a gift to be cherished.

A child already acquainted with the Ingalls family might like to receive *A Little House Christmas Treasury* (Har-

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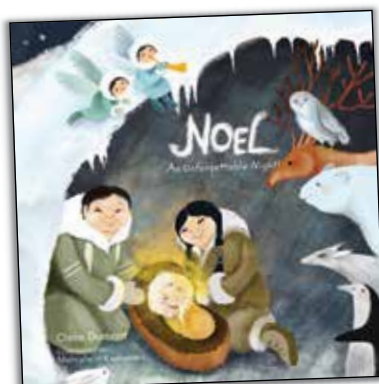
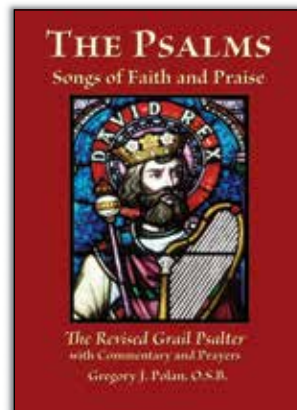
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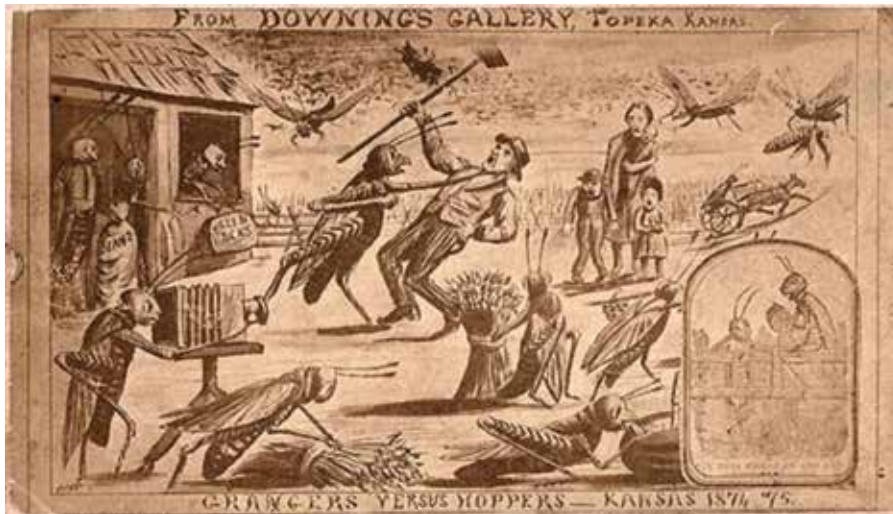


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erCollins, \$14.99, 144 pp.), which collects the abovementioned Christmas chapters from each book in a single volume. It’s perfect holiday fare, with little preaching but a great deal of genuine sacrifice and generosity.

For Advent reading I have come to cherish a picture book for very young children, *Who Is Coming to Our House?* by Joseph Slate and Ashley Wolff (Penguin, \$6.99, 24 pp.). The animals of Bethlehem prepare their stable for the

arrival of Mary and Joseph, urged on by a mouse who, prophet-like, announces the visitors’ approach (“Who is coming to our house? ‘Someone, someone,’ says Mouse”). With its repetitive text and friendly-looking sheep and ducks, the book can grab the attention of a toddler—and it is currently in print only in board-book format. But the gorgeous linoleum-block-print artwork has an air of solemnity, and as I read I find myself reflecting in a not-at-all



A Kansas farm family beset by the largest locust swarm in recorded history

childish way on my own anticipation and preparation for the arrival of the Christ Child—"Welcome, welcome to our house!"

When Advent is over, the prolific children's author and illustrator Cynthia Rylant has a brand-new picture book, *Nativity* (Beach Lane Books, \$17.99, 40 pp.), that tells the story of Christ's birth with a welcome twist. Her text is drawn directly from the Bible (King James, of course) and the illustrations are colorful, childlike painted tableaux. But after the shepherds depart the stable and leave Mary with her thoughts, Rylant shows us an adult Jesus preaching the Sermon on the Mount and ends with the Beatitudes. I can think of no other children's book that succeeds so well in demonstrating why exactly Jesus' birth is Good News, and does it with so light a touch.

My final recommendation brings me back to the world of Laura Ingalls Wilder, but this time with a book for adults. Caroline Fraser, who edited the Library of America's 2012 collection of Wilder's work, has drawn on her comprehensive research to write a terrific new historical biography, *Prairie Fires: The American Dreams of Laura Ingalls Wilder* (Metropolitan, \$35, 640 pp.). Reading *Little House on the Prairie* to my sons forced me to confront my ignorance about the specific causes of the mutual hostility between white homesteaders and the "Indians" they encountered. I was able to give only a very broad explanation for why Lau-

ra's parents were afraid of their Native American neighbors in Indian Territory—and why they nevertheless decided to settle there. Reading *Prairie Fires* filled me in on events like the grisly Dakota massacre and political forces like the Homestead Act, and answered questions I hadn't thought to ask about how and why the American West took shape the way it did. Fraser tells the story of Wilder's long life (she died in 1957) and her late-in-life writing career, including her "editorially incestuous" relationship with her daughter, the author and editor Rose Wilder Lane. But Fraser also provides a sweeping view of the background against which her subject wrote, explaining in gripping detail how the westward expansion of white settlers, conflicts with native tribes, and trends in politics, the economy, and even the climate produced the world Wilder chronicled in her books. She quotes contemporary sources—letters, journals, news reports—to put Laura's memories in a broader context (e.g., "The Ingallses had no way of knowing it, but the locust swarm descending upon them was the largest in recorded human history"). And the history she recounts is so fascinating, and her command of it so sure, that a reader need not have any special interest in Laura Ingalls Wilder to find *Prairie Fires* worthwhile.

**Mollie Wilson O'Reilly** is Commonweal's editor at large.

## Ellen B. Koneck

I have been bragging to anyone who will listen about the twelve-week writing and creativity workshop in which I participated over the summer. I find that when I frame it that way—as a *three month writing and creativity workshop*—it makes the whole endeavor sound more formal, more robust, and more serious than what you might otherwise have concluded if, for instance, you'd seen us sipping wine and laughing in the back corners of bars or eating Chipotle burritos in public parks on Thursday evenings. But that's the thing about Julia Cameron's *The Artist's Way*: it requires a playful, childlike approach.

*The Artist's Way: A Spiritual Path to Higher Creativity* (TarcherPerigree, \$17, 272 pp.) is something of a cult classic in the world of self-help, owing in part to its origins as a self-publishing phenomenon. (It was soon picked up by a trade press, and last October, a handsome twenty-fifth-anniversary edition was released.) Having only completed the course book one time, I am among the least qualified to write about it—there are real devotees out there. That's because Julia Cameron doles out wisdom, advice, assignments, and exercises to begin "discovering and recovering" one's inner-artist (who is actually a child, by the way). She dedicates each chapter to an aspect of this recovery—from cultivating "a sense of safety" and "a sense of identity" to nurturing "a sense of faith" and "a sense of possibility." The concept of recovery is key, as Cameron's book hinges on the belief that all people are inherently creative—but most people have discounted and abandoned their creativity, whether fear, shame, or financial concerns motivated the lapse.

If it sounds weird, that's because it is. It's perfectly weird. Cameron takes vaguely Christian concepts of the soul, God, truth, beauty, and goodness, and relativizes them *ever so slightly*. She dabbles in pop psychology and sociology; she mixes in a healthy number of context-free quotations from ancient philosophers.





Layli Long Soldier

I like to imagine that Cameron has combined the wisdom drawn from her eclectic reading in just the right way to appeal to both the spiritual and the skeptical. For example, atheists and believers alike are bound to take her idea of *synchronicity* with a grain of salt—“loosely defined as a fortuitous intermeshing of events”—even as they consider examples of the phenomenon from their own lives. “Whatever you choose to call it, once you begin your creative recovery you may be startled to find it cropping it up everywhere,” she explains.

Though I’m not quite sure I believe in synchronicity—grace, maybe?—by the end, it didn’t matter. I took Cameron’s advice (three pages of stream-of-consciousness handwriting each morning; reflecting on abundance and scarcity in childhood and adulthood; dreaming up the “alternative lives” I might have lived if I hadn’t pursued this or that opportunity) and her advice worked. For all its New-Agey rhetoric and early-90’s sentiment, *Artist’s Way* manages to clarify passions, identify weaknesses, and offer concrete tools for fostering creative habits. It is also, for the record,

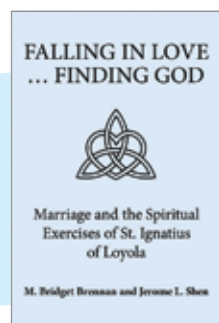
a great excuse for weekly wine drinking with friends.

I was sipping wine when I first heard Layli Long Soldier read from her Whiting Award-winning debut poetry collection *Whereas* (Graywolf, \$16, 114 pp.) at a Graywolf Press literary salon in Minneapolis this fall. Long Soldier began reading just after insisting that she didn’t like to do readings—that her skills were better suited to poetry *writing*. I am not sure that’s exactly true. Her performance—including the way she’d cut herself off to define words or offer context, adjust her pace and inflection, or linger over the pauses she heard in her own work—was revelatory when I began my own reading of *Whereas*.

Part I of the collection paints a portrait of Long Soldier’s life that captures both the familiar and searingly particular: she is a United States citizen, a mother, a teacher, a member of the Lakota Nation, and a poet observing the world. Her gentleness and self-deprecating charm are powerfully present in her poetry. In writing, too, Long Soldier cuts herself off—words are crossed out, ideas are repeated. She defines words for the reader; she offers context. She writes “A poem about writing, *bo-ring*. Says my contemporary artistic companionate, a muscular observation and I agree.” But this *bo-ring* poem about writing, we learn, is scribbled at a summer burial: “He’s praying he’s asking. He doesn’t see me, my gesture’s futile. What am I doing here, writing. What am I doing here righting the page at funerals.”

This seems to be a strategy for Long Soldier: playing with language, she enters heavy spaces almost from the side, as if sneaking up on them. Her starting point is often the writing itself—the immediate—which slowly opens up to larger meditations. One poem begins by defining the Lakota word “Tókhah’arj”—“to lose, to suffer loss, to be gone, lost” and, in the pages of verse that follow, painfully narrates the myriad traumas of a miscarriage: from initially mistaking the bleeding for spotting, to the inanity of filling out paperwork at a clinic before she could be admitted, to the deep, confused grief that followed.

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Part II of this collection, from which the title *Whereas* comes, gives further insight into this capacity to outline traumas and capture raw grief. “On Saturday, December 19, 2009, U.S. President Barack Obama signed the Congressional Resolution of Apology to Native Americans,” she writes at its start. No tribal leaders were present because none were invited; the apology was not even read aloud. The rest of Part II of *Whereas* is Long Soldier’s reply to the U.S. government’s tone-deaf and tardy apology. As she observes:

I am a citizen of the United States and an enrolled member of the Oglala Sioux Tribe, meaning I am a citizen of the Oglala Lakota Nation—and in this dual citizenship, I must work, I must eat, I must art, I must mother, I must friend, I must listen, I must observe, I must community, constantly I must live.

Many have already written with awe about this second half of the collection, and with good reason. Every poem in Part II begins (you guessed it) with “Whereas,” just as each section of the government’s Apology begins. The first lays groundwork for those that follow:

WHEREAS when offered an apology I  
watch each movement the shoulders  
high or folding, tilt of the head both eyes  
down or straight through  
me, I listen for cracks in knuckles or in the  
word choice, what is it  
that I want? *To feel* and mind you I feel  
from the senses—I read  
each muscle, I ask the strength of the  
gesture to move like a poem.

Here Long Soldier employs, mirrors, and inverts the sanitized rhetoric of the Apology for her own storytelling; a poetic feat that Maggie Nelson calls “trenchant, beautiful thinking and writing about the relationship between official political speech and literature’s capacity to write back.” Others have said her poetry is “an arena of witness and longing.” Or as Julia Cameron might say, it *recovers a sense of possibility*.

**Ellen B. Koneck** works in academic publishing in Minneapolis.

## Paul Baumann

Suzy Hansen’s *Notes on a Foreign Country: An American Abroad in a Post-American World* (Farrar, Straus and Giroux, \$26, 276 pp.) has gotten a good deal of attention, and deservedly so. Hansen, an American expat who moved to Turkey in 2007, grew up in New Jersey, and made her way into New York journalism after the University of Pennsylvania. She is disarmingly candid about the many things she didn’t know about the military interventions and economic machinations of the United States abroad over the past seventy years. She discovers, for example, that the United States first used napalm in Greece during the civil war that broke out immediately after WWII, and that U.S. support for coups in Turkey, Iran, and other places is remembered bitterly in those countries even if these incidents are forgotten or were never known by most Americans. Hansen writes well, especially about architecture and cityscapes. On assignment in Kabul, she observes that “the Afghan elite lived in enormous ‘poppy palaces,’ the Central Asian disco version of a McMansion, homes so unbearably ugly and ostentatious, they seemed to be engaged in satire.”

*Notes on a Foreign Country* is a coming-of-age tale. The foreign country of the title is not Turkey but America, and Hansen’s ambition is to show how the United States is perceived by those who have had to grapple with U.S. preeminence, especially those in the Middle East. It is also an examination of how her own very American preoccupations and prejudices prevented her from understanding the “foreigners” she was often writing about. Perhaps most of all, it is a love letter to Istanbul, the ancient city where Hansen has found a society and a culture that compelled her to shift her perspective in a way that enabled her to see herself and America more clearly. She explains how she came to appreciate what Islam means to many Turks and others around the world, and why it is a mistake to see a strong religious identity

as a threat. She does not make a case for the superiority of Turkey, and she doesn’t hesitate to criticize bad actors, regardless of where they were born. But she insists that looking at the United States from a distance puts American pretensions to exceptionalism in context. “America First” has long been our calling card. Or as she writes, “Denial and forgetting were critical to the patriotism that held the idea of the Turkish nation together, and to its nationalism. They had been crucial to America’s nationalism, too.”

Two other Americans who found living abroad deepened their sense of human possibility were the literary couple Shirley Hazzard and Francis Steegmuller. Hazzard, originally from Australia, was a brilliant novelist (*The Transit of Venus*, *The Great Fire*), and Steegmuller a distinguished translator and biographer, best known for his translations of Flaubert. They made their home in New York City, but every year would spend a month or more in Naples, a city of monuments and churches, a place relished for its palpable sense of a still-present past, as well as for its “squalid” vitality. The essays in *Ancient Shore: Dispatches from Naples* (University of Chicago Press, \$18, 112 pp.), were written over many years. Italy is a place, Hazzard writes of her first visits, where “the cult of leisure flourishes still and where variety and pleasure can fill up many, though not all, days.” In the aftermath of WWII, it offered an “admixture of immediacy and continuity, of the long perspective and the intensely personal.” Hazzard further discovered that “the ability to rise to the moment, to the human occasion, is linked to a sense of mortality intrinsic, in Italy, to all that pleases us.”

In *Ancient Shore*, these two immensely learned people move appreciatively among the remnants of Naples’s Greek, Roman, Renaissance, and Bourbon past while navigating a city of motorbikes speeding by on narrow streets. Steegmuller’s frightening encounter with one of Naples’s uglier but all-too-common incidents anchors the book. While he and Hazzard are walking together, his



bag is ripped from his hands and he is knocked to the ground and dragged by two thieves on a motorbike. His shoulder and nose are broken, as well as a tooth. Steegmuller's meticulously observed recreation of the incident and the excellent medical attention he received in rundown and poorly equipped Italian hospitals is a tribute to how important the human presence and touch is to the sick or injured.

Returning to New York, to its magnificent hospitals, brilliant doctors, and "interminable waiting," Steegmuller laments "a sense of removal from the normal reciprocity of existence," something abundantly present in shabby Naples. Suffering a relapse, he remains in a New York hospital for a week. There "even the kindest of my new hospital attendants—and many were very kind indeed—spoke to me across an artificial barrier of polysyllabic indirection, where my 'stressful situation' was being 'checked out,' and where I could never simply be told but must everlastingly be 'notified' of my 'ongoing status.' All my Neapolitan rescuers had used direct, expressive words, words still vigorously derived from human experience; none had...been persuaded to embrace pretension in the name of professionalism."

Speaking of the Italian genius for speaking to and from the heart, even if somewhat cynically, Pete Hamill's *Why Sinatra Matters* (Little Brown, \$26, 187 pp.) is required reading for any true believer. In my early twenties, smitten as I was with The Band, James Taylor, and Crosby, Stills, Nash & Young, I came upon an album of Sinatra singing Cole Porter songs. Nelson Riddle was the arranger. It was a revelation. Hamill, a novelist as well as a great journalist, knew Sinatra, at least socially. One of his claims is that Sinatra "perfected the role of Tender Tough Guy...creat[ing] a new model for American masculinity." True, I suppose, although that seems to have gone the way of EPA regulations. What remains is Sinatra's extraordinary voice and his impeccable phrasing and musicianship. Hamill quotes Miles Davis's assessment of the Sinatra-Riddle collaboration. "A lot of musicians and



Portrait of Frank Sinatra at Liederkrantz Hall in New York by William P. Gottlieb, circa 1947

writers don't get the full value out of a tune," Davis said. "[Art] Tatum does and Frank Sinatra always does. Listen to the way Nelson Riddle writes for Sinatra, the way he gives him enough room and doesn't clutter it up."

If, for whatever reason, you don't cotton to Sinatra, Hamill just might convert you.

I'll end with two books that explore a different revelation. Generous in tone and respectful of objections raised by skeptics, the British philosopher John Cottingham is the best sort of Catholic apologist. In *Why Believe?* (Bloomsbury, \$18.95, 208 pp.), he argues that a belief

in God is a rational response if you reject moral relativism and concede the objective nature of goodness and virtue. In *How to Believe* (Bloomsbury, \$30, 176 pp.), he reminds us that you cannot think your way into belief; you must live your way into a new way of thinking. If you do that, aspects of reality once hidden will become evident. A sports analogy might help. Until you get good at playing a sport, you really can't enjoy it. Nor, at another level, can you know the beauty or the truth of it.

**Paul Baumann** is the editor of *Commonweal*.

## Ingrid Rowland

**R**eaders in search of some year-round Christmas spirit will find it in Terence Ward's *The Guardian of Mercy: How an Extraordinary Painting Changed an Ordinary Life Today* (Arcade Publishing, \$24.99, 200 pp.). The extraordinary painting is Michelangelo Merisi da Caravaggio's *Seven Works of Mercy*, painted in Naples in 1607 for seven young noblemen who had founded a religious organization in 1603, committed to relieving the plight of the poor. They called their sodality the Pio Monte della Misericordia, the "Pious Hoard of Mercy," and as we learn from *The Guardian of Mercy*, it still exists today, staffed by descendants of the original founders.

For their newly constructed chapel in the heart of the city, they wanted a series of inspirational paintings, one for each of the Seven Acts of Mercy named by Jesus in the Gospel of Matthew (25:35–36): "For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me." Caravaggio's arrival in Naples furnished these remarkable young men with the perfect opportunity to hire the most exciting young artist in Italy to present their mission to the public eye.

Caravaggio may have been the most famous painter of his era, but he was also a condemned criminal, fleeing a murder charge in Rome, where he had skewered a local gang leader, Ranuccio Tomassoni, on a tennis court. In Naples, he found shelter and safety. His tortured life was marked by great kindness as well as great tragedy, and his paintings show it.

With consummate skill, the artist managed to combine all seven works of mercy in a single painting (and even added an eighth, burying the dead) showing these compassionate acts as



Caravaggio, *The Seven Works of Mercy*, 1607

they play out on a crowded, narrow street in seventeenth-century Naples, where beautifully dressed aristocrats rub shoulders with wretched, half-naked beggars—the same streets where the members of the Pio Monte carried out their work. When Ward describes

Caravaggio's paintings, it is always with an eye to the similarities between Caravaggio's Naples and the modern city, beautiful and profoundly troubled.

The "ordinary life" of the book's subtitle is that of a Neapolitan named Angelo Esposito, a city employee who was

moved in the 1990s from a bureaucratic office in the Department of Sanitation to the Baroque dome of the Pio Monte. Angelo was one of many people enlisted by the new mayor, Antonio Bassolino, to protect the city's marvelous but vulnerable works of art and architecture. Bassolino's "Neapolitan Renaissance" lasted only a few years, but some of its effects are still noticeable, including the transformations that a painting by Caravaggio brought to the humble man who was suddenly charged with standing before that painting all day every day. Angelo responded instinctively to Caravaggio's starkly realistic scenes, so evidently set in the same streets where he worked. He began to read more and more about the painting and its maker. Ranuccio Tomassoni, the man Caravaggio murdered, was no different from the Camorra gangsters who plague contemporary Naples, and the works of compassion the artist shows in his great painting are essentially the same works carried out by the Pio Monte today. Hence when Terence Ward, his wife Idanna Pucci, and a Neapolitan friend wandered into the church one sultry morning, Angelo was ready to talk knowledgeably to the friendly visitors, and eventually to forge a genuine friendship with the Wards. A crisis in Angelo's personal life brings all the threads of Ward's story together, with Caravaggio and Idanna working in unlikely partnership to carry out their own work of mercy by helping a friend in need.

Rainer Maria Rilke's poem on a Greek statue, "Archaic Torso of Apollo," ends with the line "Du mußt dein Leben ändern"—"You must change your life." Sometimes art asks nothing less, but what a gift that change can prove to be.

**T**he Norwegian writer Karl Ove Knausgård inspires fierce reactions, both positive and negative. He is best known for his six-volume autobiography, *My Struggle*, thousands

of pages devoted to the first forty years of his life. The project sounds impossibly banal, or impossibly bombastic, but in fact it reminds us that all our lives, long, short, great, or tiny, contain endless volumes of experience. This writer simply has the capacity to remember the sights, smells, and textures of individual moments in kaleidoscopic, and sometimes ruthless, detail. (Some of the people he has written about are none too happy with being so commemorated.) The phenomenal sharpness of Knausgård's memory also brings back, together with his own reminiscences, the long-ago sensations we ourselves may have buried, overwritten, or tucked away. The pangs of adolescence still seem to stab him with the same intensity, and for many readers his observations will make them reach back into their own trove of stored perceptions and find treasure.

The first Knausgård novel to be translated into English was *A Time for Everything* (Archipelago, \$20, 499 pp.), a three-part story with no apparent connection among its three sections except, perhaps, the author's genius for description and his intense engagement with nature—no apparent connection, but connections can be made all the same.

The first section, set in the seventeenth century, follows an adolescent boy into the forest, where he vandalizes an anthill in what feels like a parable of primordial evil, humankind making a wreck of nature just because it can. The book's long midsection retells the story of Genesis in a Holy Land that resembles a Norwegian forest rather than parched Mediterranean limestone, but then the seventeenth-century Swedish scholar Olof Rudbeck (1630–1702) famously asserted that Sweden had been the Holy Land, as well as Plato's lost Atlantis. Knausgård sets Adam and Eve in a terrain that Rudbeck would have recognized, provides a harrowing description of Cain murdering Abel, and moves on to describe Noah and the Flood from

the neighbors' point of view. With the Earth's sea levels destined to rise inexorably thanks to our meddling with the atmosphere (shades of that young boy uprooting the anthill at the beginning of the book), Knausgård's description of endless rain and rising waters provides a chilling, and unforgettable, preview of our own potential future.

The final segment follows the self-destructive binges of a contemporary schoolteacher who has run away to the barren coast after seducing one of his own students, a teenaged girl, evoking the same overarching (and eternal) themes of guilt, innocence, nature, and human beings' capacity to make a wreck of beauties beyond their grasp.

The gentle side of Knausgård's acute sensitivity dominates *Autumn* (Penguin, \$27, 240 pp.), the first in a series of four volumes about the seasons dedicated to his then-unborn fourth child. Each day, the father-to-be writes a short vignette for the baby, describing some aspect of the world it will be entering. "If you are a boy," he promises, "your name, we suggested, will be Eirik. Then your name will have the same sound in it as the names of all your three siblings—y—for if you say them out loud, they all have it—Vanja (Vanya), Heidi (Heydi), John (Yonn)." But instead she turned out to be Anne: "I had suggested Anne, if you turn out to be a girl, and now Linda [Knausgård's wife Linda Boström] said she really liked the name, there is something light and sunny about it, and that is a quality we want to be associated with you." The book may be written with Anne in mind, but it really is for grownups, and comes with evocative illustrations by Oslo artist Vanessa Baird. It's what I'm reading now. ■

**Ingrid D. Rowland** is a professor at the University of Notre Dame's Rome Global Gateway. Her latest book, cowritten with Noah Charney, is *The Collector of Lives: Giorgio Vasari and the Invention of Art* (W. W. Norton & Company).



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Edward Skidelsky

# Mad Men & the Just Man

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## Ethics in the Conflicts of Modernity

An Essay on Desire, Practical Reasoning, and Narrative

Alasdair MacIntyre

Cambridge University Press, \$49.99, 332 pp.

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Modern academic philosophy is a strange and solemn game, to convey whose spirit would require the genius of a Kafka or a Borges. Participants in this game must pretend that they are progressing stepwise toward Truth, as bad theories are discarded and better ones put in their place. Yet in fact there is no progress, only an endless subtilizing of rival opinions. All philosophers know this, yet few dare admit it, for the game can continue only as long as no one acknowledges that it is a game.

Alasdair MacIntyre has opted out of the game. Human reason, he insists, is properly at home within some particular tradition of practice—in his case, that of the Roman Catholic Church. Divorced from such a tradition it must degenerate into sterile technique, masking arbitrary will. These views have made MacIntyre an outsider to his profession. Mainstream moral philosophers don't know what to make of him. They grudgingly acknowledge his brilliance—and carry on playing the game.

MacIntyre's latest book, *Ethics in the Conflicts of Modernity*, kicks off with an innocuous-looking line of questions about action and desire. Can we explain our actions, to ourselves or others, by saying what desire they satisfy? In certain contexts, the answer is patently "yes." ("Why are you waving at the waiter?" "Because I want more chocolate cake.") But note that we accept this explanation only because eating chocolate cake in a restaurant is typically a pleas-

ant and harmless thing to do. Substitute an alternative explanation—"because I want to create a nuisance," "because I want to imitate a poplar swaying in the wind"—and the action becomes perplexing. (Why would anyone want *that*?) Desires, concludes MacIntyre, cannot on their own explain action. They can do so only insofar as they have some intelligible point, aim at some good.

MacIntyre is here reiterating, in somewhat different words, Thomas Aquinas's famous dictum that "every desire is for some good." Aquinas's claim was not that all desires are good but that even bad desires aim at *some* good—typically pleasure, reputation, or gain—at the expense of the superior goods of virtue and God. A desire that aimed at no discernible good would be unintelligible to us. This has important practical consequences. If every desire involves the apprehension of its object as good, then insofar as that object is *not* good, or not as good as some alternative object, the desire stands condemned. Asceticism, the disciplining of desire, is an imperative of desire itself. This is the meaning of the saying—often attributed, falsely, to G. K. Chesterton—that "the young man knocking on the door of the brothel is really looking for God."

MacIntyre's Thomist conception of action and desire is today a minority one. The dominant modern view, derived from David Hume, is that desire itself, independent of any idea of the good, suffices to explain why we do what we do. Economists in particular see all human action as endeavoring to maximize satisfaction of some given set of preferences. This is not quite the bald assertion of egoism it is often taken to be, for the preferences in question might include preferences for, say, social justice and world peace. They might even include preferences for *other* preferences,

as when someone earnestly wants not to want another glass of wine. *Homo economicus* need not be a Caliban. Nonetheless, inasmuch as the promptings of his better nature appear to him simply as one set of preferences among others, he has no overriding reason to obey them. Why should he *not* go with the desire to drink wine, as opposed to the desire not to desire to drink wine? What if it is the former, and not the latter, which represents his "real self"? If for Aquinas desire moves naturally upward, from lower to higher, for his Humean rival it might just as well move downward, from higher to lower. The young man looking for God is really knocking on the door of the brothel.

The dispute between these two accounts of human action, Thomist and Humean, is ongoing and to all appearances interminable. It fills volumes in university libraries. MacIntyre does not seek to contribute directly to this dispute. He has no knockdown arguments to offer. His goal is rather to win over the Humean by showing him that his view of human action is the intellectual counterpart of a specific social development, which it both reflects and conceals. He aims to provide "a sociology and a psychology of philosophical error." How does he go about it?

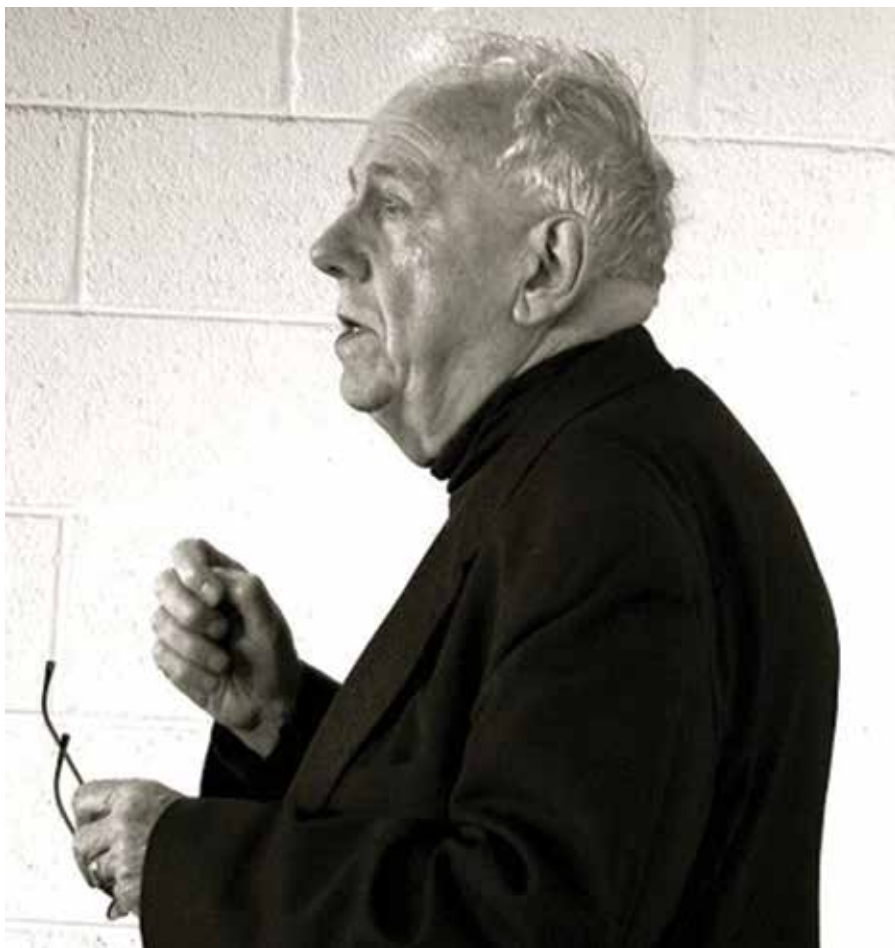
MacIntyre's first step is to outline a contrast between two forms of human association. The first might be illustrated (with a touch of idealization) by a painters' workshop in fourteenth-century Florence. Members of this workshop act in concert to achieve the ends internal to the practice of painting: beauty of form and color, fidelity to life, and so forth. Success in this enterprise may bring other benefits too—profits, prizes, etc.—yet these are sought not for themselves but as tokens of recognition or as means to the workshop's continued



existence. Workshop apprentices are taught to recognize and value the goods intrinsic to their craft, to accord them a proper place—not too low, not too high either—in their deliberations. They are trained to discipline their desires, to direct them toward what is for them, given their social role, objectively desirable. Insofar as this training is successful, they will deliberate in the way described by Aquinas, not Hume.

Now contrast this workshop with another (no doubt equally idealized) organization: a modern advertising agency. Writing advertising copy is a highly skilled activity. It requires wit, versatility, imagination, and empathy—all the talents, in fact, of the artist and the poet. Nonetheless, the end of advertising is *external*, not internal, to the activity of advertising itself: it is to sell goods for clients, and ultimately to make money for the agency. Making money can be a shared end, but not a genuinely common end; partners in a commercial enterprise are “in it for themselves,” though their interests may provisionally coincide. Advertising, then, can provide nothing equivalent to the kind of education of desire fostered by the medieval atelier. It is simply a milieu within which existing desires may be (or fail to be) satisfied. Workers in advertising will usually deliberate in the way described by Hume, not Aquinas.

**M**y choice of advertising as an example is not entirely accidental. While reading *Ethics in the Conflicts of Modernity*, I belatedly discovered what must surely be one of the great works of art of the past decade, the television drama series *Mad Men*. Here, it struck me, was a flesh-and-blood counterpart to MacIntyre’s rather abstract diagnosis of modernity and its ills. *Mad Men*, as readers of *Commonweal* doubtless know, depicts the ups and downs of a New York advertising firm in the 1960s. Its central character, Don Draper, the firm’s creative director, has talent, charm, and good looks. He is not without virtues either: he is, on occasion, brave, loyal, and generous. Yet something crucial is missing in him, as we soon become aware: a sense of



Alasdair MacIntyre, 2009

purpose or “character.” His life is fragmented, both diachronically (its various stages have little connection with each other) and synchronically (its different spheres are kept rigidly apart). It lacks “narrative”—a key MacIntyrean term. Yet this very lack of narrative coherence makes Draper a fascinating figure, to women in particular. He seems deep, and in a sense he is, but only because he is empty.

There is, of course, a connection between Don Draper’s personality (or lack of it) and his profession. Ad men are occupational seducers and, like all seducers, prudentially adaptable. They must be ready to put on any tastes, drop any convictions, in pursuit of their target demographic. (In one episode, Draper writes a letter to the papers denouncing the tobacco industry, but only because he hopes for new clients among the anti-smoking lobby following his firm’s dismissal by Lucky Strike.) Advertising is

the quintessential postmodern industry, a paradigm of the triumph of surface over substance. But back to MacIntyre.

“Man does not pursue happiness,” wrote Nietzsche famously; “only the Englishman does that.” MacIntyre’s argument has a similar form. It identifies what purports to be a *philosophical* truth about human action in general as a *sociological* truth about human action at a particular stage of historical development. “Man” does not seek to maximize preference-satisfaction; only advertising executives and their ilk do that.

Of course, sociology on its own cannot settle a philosophical argument, as MacIntyre is well aware, for it always cuts both ways: if Hume’s theory of action is an expression of its time in thought, then so too presumably is Aquinas’s. To avoid this skeptical conclusion, MacIntyre must show that the two theories are not on a par, that the form of association presupposed by

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Aquinas is basic and universal, whereas that presupposed by Hume is local and derivative. He does this by demonstrating that all of us today, in large areas of our professional and above all family life, act and think like Thomists, even if the dominant language of modernity conceals this from us. (Gary Becker's economic theory of marriage owes its plausibility, MacIntyre remarks shrewdly, to the fact that many modern marriages do indeed operate, or think they operate, on the principles he describes; but such marriages are generally headed for divorce.) Even capitalist enterprises depend for their survival on the tiny networks of goodwill that grow up, unbidden, in their interstices, though these are inevitably stifled by the overall logic of the institution. *Mad Men* depicts several "almost friendships" among members of the firm, which rivalry and mistrust prevent from coming to fruition.

MacIntyre's goal is to summon his Humean interlocutors to an effort of "sociological self-knowledge"—that is,

"to reflect upon the extent to which in their thinking and acting in families and households, in schools, and in workplaces they already presuppose the truth of some key Aristotelian and Thomistic claims concerning individual and common goods." MacIntyre is making a Wittgensteinian point here: philosophy is a reminder of what we already know, of what misguided theory has caused us to forget.

*Ethics in the Conflicts of Modernity* contains much more than this superficial summary can convey. There are responses to philosophers László Tengelyi, Galen Strawson, and, above all, Bernard Williams—another shrewd critic of mainstream moral philosophy, though of a very different stamp. There is a bravura demolition of the "happiness" movement, summed up by an exchange between De Gaulle and a journalist unwise enough to ask him if he was happy ("I am not stupid" was De Gaulle's reply). The book concludes with mini-biographies of Vasily Gross-

man, Sandra Day O'Connor, C.L.R. James and Fr. Denis Faul—all illustrative, in different ways, of the problem of reconciling personal integrity with public loyalties. One wonders if this is a dilemma that MacIntyre, as a Catholic and some sort of a Marxist, has had to grapple with himself.

This book is not, it must be said, an easy read. Its argument is dense; its sentences struggle to capture every facet of their subject, however unimportant. (A typical example: "What will strike our imagined neo-Aristotelian most, perhaps, is that Nietzsche has excluded himself from and invited others to exclude themselves from just those types of practice and just those types of relationship in which and through which we learn how to become practically rational agents and how to exercise those virtues without which rational deliberation is not possible.") In other places, though, especially where the misdeeds of the powerful are at issue, MacIntyre writes with great trenchancy; and one detects, underneath a cool and measured argumentative surface, the heart of an Amos or Isaiah, burning with righteous anger. The word "just" is today rarely applied to persons as distinct from laws and institutions, but here it is appropriate. MacIntyre is a just man, as well as a great thinker. ■

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Lost Forty Old Growth III

## A Walk in the Woods

*Betsy Johnson-Miller*

I usually come to places like this by myself. I assume that will make it easier for the Whatever it is I am looking for to find me and make everything okay. But I asked my fifteen-year-old daughter to come along with me today, because I thought it might make me feel less alone. I never expected her to be my John the Baptist, telling me a truth from the wilderness as if my life depended on it.

We stand in a virgin forest in northern Minnesota called the Lost Forty, which escaped the voracious teeth of logging saws because of a mapping error. These pines did not end up as telephone poles in Kansas or as masts at the bottom of the Atlantic. They have stretched toward the sun since before the Civil War.

Even though it's almost April, my daughter sinks into hip-deep snow when she steps off the trail to throw her arms around the biggest tree we've encountered yet. When she presses her cheek to its rugged bark, I get my first inkling she knows something that I do not. I'm ready to press on. "We need to go," I say. Why? There is no good reason. My daughter, on the other hand, has entered into a covenant with the wild: *you be, I'll pay attention*.

I look around. These trees stand so straight they line up like rough pencils inside a blue box. Loggers ignored these trees a hundred years ago. Greed, speed, and noise ignore them now.

Enough dawdling. "Let's see where this trail leads," I tell my daughter. Before long, we spy a brown lump. The snow around the dead owl, which is the size and shape of a seal pup, is undisturbed. The bird must have literally dropped out of the red pine. I leave the trail to get a closer look at it, and the deep snow eats my legs. The owl has no visible wounds or signs of age, only a

fractal beauty, and the creature looks so healthy and whole that I have to ask, "It is dead, isn't it?" My daughter joins me, and we both bend down to stare at the owl. The breeze that ruffles its feathers makes it look as if the creature were breathing. "Yes," she says. "It has to be."

We walk on—my daughter whistles. I brood on the dead owl, as if it might impart some lesson. The owl doesn't flee from this forest or this moment. It isn't crippled by doubt or driven by the restlessness that more often than not leaves me thrashing. Some days I can barely keep my head above water. The question "What's the point?" keeps pulling me down. Take this owl. Something beautiful, now inexplicably dead. I think about a child in a coffin, a gun in a school, an eye in a storm as big as Ohio. Where was—where is—the Whatever to make it okay?

My daughter and I find ourselves by a small trail that juts to the right. We take it and it leads us to another giant tree and a hill. From the wide and open marsh below, we hear a rhythmic trill. "Is that a frog?" my daughter asks. It is almost April, but because we are surrounded by so much snow, that feels cold-tomb impossible. We stand in snow and sun. I want to turn back toward the owl, but my daughter links her arm in mine and spins me toward the marsh again. The two of us stand, the sun on our faces, and she puts her head on my shoulder. I do not run or thrash. I pay attention to the feel of her, to my face that is warm from sun and cold from wind, to the sounds of new life rising. I pay attention to the truth my daughter is telling me. It matters where and how we look. ■

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