

Christian Legal Thought

Liam Ray

Nicholas A. DiMarco

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SYMPOSIUM
CHRISTIAN LEGAL THOUGHT
INTRODUCTION

LIAM RAY[†] & NICHOLAS A. DIMARCO^{††}

On January 26, 2018, the *Journal of Catholic Legal Studies* proudly hosted a conference on *Christian Legal Thought: Materials and Cases*¹ a first-of-its-kind casebook authored by Patrick M. Brennan and William S. Brewbaker.² Held in Manhattan at the New York Athletic Club, the conference brought together scholars from law schools across the country to discuss the casebook's impact, as well as the role Christian legal thought might play in the contemporary law school curriculum.

The casebook has several unique advantages. Some of those advantages are theoretical. For example, reviewers had the opportunity to weigh in on the relationship between Christian

[†] J.D., 2018, St. John's University School of Law; Senior Articles Editor, *St. John's Law Review & Journal of Catholic Legal Studies*. Both authors thank Professor Marc O. DeGirolami, the journal's faculty advisor, for his guidance and support throughout this process, and for his helpful edits to this introduction.

^{††} J.D., 2018, St. John's University School of Law; Editor-in-Chief, *St. John's Law Review & Journal of Catholic Legal Studies*. The author also extends thanks to the journal's Managing Editor, Melissa Parres, for her editing and support.

¹ PATRICK MCKINLEY BRENNAN & WILLIAM S. BREWBAKER III, *CHRISTIAN LEGAL THOUGHT: MATERIALS AND CASES* (Foundation Press 2017). "CLT" is used to refer to the casebook throughout this volume. An important forebear to CLT is *Christian Perspectives on Legal Thought*, edited by Michael W. McConnell, Robert F. Cochran, Jr., and Angela C. Carmella and published in 2001.

² Professor Brennan is the John F. Scarpa Chair in Catholic Legal Studies and Professor of Law at Villanova University School of Law. Professor Brewbaker is the William Alfred Rose Professor of Law at the University of Alabama School of Law. We humbly dedicate this symposium issue to Ms. Carol Hodges, Professor Brewbaker's mother, who passed away immediately prior to the conference.

legal thought and contemporary legal thought.³ A casebook of CLT's breadth also provides a springboard for elaboration on particular legal and theological subjects or themes.

Other advantages are more practical. As student-editors, we were particularly interested in the who, why, and how: Who might use the casebook, and for whom might the casebook be useful? Why, in the words of the late professor William J. Stuntz, should anyone think about law in Christian terms anyway?⁴ And how might the casebook best be used in the classroom setting? And of course, in reviewing Brewbaker and Brennan's fine book, we acknowledge that it does something different from other casebooks, which are released by the dozens each year—it “address[es] topics of interest to the law school community from an often-neglected vantage point, and introduce[s] questions that many law professors and law students might never think to ask.”⁵

Brewbaker and Brennan themselves admit that the law students they encounter “tend to know far more about the natural and social sciences, economics, postmodern critical theory, and liberal political philosophy than about Christian thought covering the same conceptual space.”⁶ This casebook is a critical step towards correcting that imbalance. It provides those students who “seek[] to connect their faith to larger issues in the public square”⁷ with a range of resources to assist them in that enterprise. And it furnishes courses in Christian legal thought with a foundational text that brings together a variety of theological traditions and engages a range of legal issues, from criminal law and contracts to property and environmental law. The casebook will undoubtedly generate interest in Christian legal thought as a school of legal thought, but as recent law-school graduates, we hope that its primary impact will be practical and felt “on the ground,” guiding students in their search for the truth (or at least offering them a worthwhile and

³ Indeed, this is one of the “overarching goal[s]” of the casebook. CLT, *supra* note 1, at 62.

⁴ William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1707–12 (2003), as reprinted in CLT, *supra* note 1, at 1.

⁵ Randy Beck, *The Forest and the Trees: What Educational Purposes Can a Course on Christian Legal Thought Serve?*, 56 J. CATH. LEGAL STUD. 9 (2017).

⁶ CLT, *supra* note 1, at v.

⁷ *Id.* at vi.

interesting perspective) and instructors as they introduce their classes to the ways the Christian tradition can illuminate recurring issues of law and justice.

Professor Randy Beck's review of the book embodies this practical approach. In his paper *The Forest and the Trees: What Educational Purposes Can a Course on Christian Legal Thought Serve?*⁸ he asks how law professors can use the casebook to further the goals of legal education. He begins by framing the question with the help of the metaphor in which legal education is like studying a very old forest. Whereas many classes "take students down among the trees," in the weeds as it were, a course in Christian legal thought is more like the "opportunity to climb to an elevated position and look out over a large swath of wooded terrain, observing the roads and paths that connect one part of the forest with another."⁹ The forest is the collective body of knowledge about the law, and by viewing it from the Christian mountain-top, students can learn not only about Christianity but about the dense forest of legal knowledge as well. Based on his experience teaching a seminar called Christian Perspectives on Legal Thought at the University of Georgia Law School, Beck identifies three ways that "reflecting on Christian views of law might further educational purposes significant to a secular law school."¹⁰

David A. Skeel, a corporate law professor at the University of Pennsylvania Law School, also considered the classroom perspective.¹¹ Suffused with enthusiasm for the topic of Christian legal thought and excitement for the casebook's publication, Skeel's paper *Christian Legal Thought Comes of Age*¹² discusses three "features" of CLT. After briefly canvassing the scope of the casebook's materials, Skeel elaborates on his support for its presentation of Christian legal thought without reference to competing legal philosophies. This, Skeel says, is a

⁸ Beck, *supra* note 5.

⁹ *Id.* at 11.

¹⁰ *Id.* at 10.

¹¹ Some of Skeel's work in the area of Christian legal thought is excerpted in the casebook's section "What is Christian Legal Thought?" *E.g.*, David A. Skeel, Jr., *The Unbearable Lightness of Christian Legal Scholarship*, 57 EMORY L.J. 1471 (2008); David A. Skeel, Jr., *The Paths of Christian Legal Scholarship*, 12 GREEN BAG 2D 169 (2009).

¹² David A. Skeel, *Christian Legal Thought Comes of Age*, 56 J. CATH. LEGAL STUD. 27 (2017).

“wise” choice from a pedagogical perspective, because “[a] teacher need not adopt a particular account for a class on CLT,” and could in fact “bog[]” down the class if she elected to do so.¹³ Second, Skeel commends Professors Brennan and Brewbaker for their effort to provide a diverse array of Christian perspectives in the materials the casebook includes. When faced with the decision whether to present a “unified perspective”—*the* Christian perspective—or draw “from a variety of Christian traditions” and let the “theological traditions speak for themselves,”¹⁴ Brewbaker and Brennan opted for “eclecticism.” Third, Skeel argues that future editions of the casebook should include additional materials on contemporary Christian legal thought and its influence on American law in the past century. Skeel concludes his paper by offering some thoughts on who might want to teach a class using CLT and why. Most interesting perhaps is his call for more Christian professors in law schools.¹⁵

Readers interested in the range of materials excerpted in CLT might turn to Seton Hall University School of Law Professor Angela C. Carmella’s paper, *Brennan and Brewbaker’s Christian Legal Thought: Providing the Foundations for Establishment Clause Understanding*,¹⁶ which thoroughly explores the casebook’s substance. In particular, Carmella’s review examines the materials pertaining to the U.S. Constitution’s Establishment Clause to build upon her own leading scholarship in this area.¹⁷ She notes at the outset that Christian institutions have little use for the establishment clause and asks whether Christian legal thought compels that reading. After a review of

¹³ *Id.* at 31 n.13.

¹⁴ *Id.* at 33.

¹⁵ To paraphrase one conference attendee (a law student) who had recently served on a committee for faculty hiring: If there is one thing that was not considered when evaluating candidates for a position, it was whether the candidate was Christian.

¹⁶ Angela C. Carmella, *Brennan and Brewbaker’s Christian Legal Thought: Providing the Foundations for Establishment Clause Understanding*, 56 J. CATH. LEGAL STUD. 39 (2017).

¹⁷ See, e.g., Angela C. Carmella, *Everson and Its Progeny: Separation and Non-Discrimination in Tension*, in *EVERSON REVISITED: RELIGION, EDUCATION, AND LAW AT THE CROSSROADS* 103 (Jo Renée Formicola & Hubert Morken, eds., Rowman & Littlefield, 1997); Angela C. Carmella, *Establishment Clause Limits to Free Exercise: Good for the Common Good and for Catholic Legal Thought*, 15 ST. THOMAS L.J. (forthcoming 2018); Angela C. Carmella, *Exemptions and the Establishment Clause*, 32 CARDOZO L. REV. 1731 (2011).

church-state history in Supreme Court Establishment Clause jurisprudence and in traditional and modern Catholic thought, Carmella identifies six themes in CLT that help “explore the notion of the instrumental state and the non-establishment norms that define some of the limits to its political and legal authority.”¹⁸ These themes include subsidiarity, constitutional government, human rights, the limits of legal moralism, pluralism, and justice for the poor.¹⁹

As noted above, we were delighted to receive reviews that not only considered how CLT might be taught, but also that reflected and expanded on specific topics within the casebook. Professor Michael P. Moreland of Villanova University School of Law did just that in *The Pre-History of Subsidiarity in Leo XIII*,²⁰ which takes CLT’s materials on the Catholic Church’s social concept of subsidiarity and uses them as a point of departure for a deeper analysis of the concept. His paper traces subsidiarity’s origins to the papal reign of Leo XIII, somewhat earlier than the materials on subsidiarity that CLT presents from the pontificate of Pope Pius XI. Rejecting the view of subsidiarity “as a principle only of economic efficiency or limited government,” Moreland contends that it is “best viewed as an aspect of Catholic social thought’s emphasis on the human person adequately understood.”²¹ Through his careful parsing of Pope Leo XIII’s papal encyclicals *Rerum Novarum*, *Aeterni Patris*, and *Immortale Dei*, Moreland considers and advances “subsidiarity’s political theoretical and ‘anthropological’ dimensions, that is, its grounding in a conception of the person in society.”²² Digging deeper still, Moreland unearths the influence Luigi Taparelli D’Azeglio, the significant yet little-known nineteenth century Thomist, had on Leonine social doctrine as well as Leo XIII’s adoption of Thomism.

¹⁸ Carmella, *supra* note 16, at 49.

¹⁹ *Id.* at 49–50. Carmella adds an additional category, “recognition of the dialogue between notions of power and powerlessness, so central to Christian theology and yet largely unexplored in Christian political and legal thought,” *id.* at 60, at the close of her review.

²⁰ Michael P. Moreland, *The Pre-History of Subsidiarity in Leo XIII*, 56 J. CATH. LEGAL STUD. 63 (2017).

²¹ *Id.* at 66.

²² *Id.*

Finally, Professor Richard W. Garnett of Notre Dame Law School uses CLT as a springboard to begin a discussion of fundamental questions of Christian personhood and moral anthropology²³ in his paper “*There Are No Ordinary People*”: *Christian Humanism and Christian Legal Thought*.²⁴ Professor Garnett takes the quoted language in the title of his paper from a work by the Christian thinker C.S. Lewis. He highlights the fact that the casebook asks, and provides materials that help to answer, questions about Christian anthropology and others. His defense of the idea that human beings are more than merely “meat puppets” (or, in the Spanish poet and philosopher Miguel de Unamuno’s phrase, “meat and bones”) and his use of the casebook to do so is stirring and eloquent.

To be sure, a casebook like CLT is bound to face the cultural headwinds that blow in the modern American law school and the culture more broadly. After all, it is no secret that traditional religious affiliation in general is on the decline in the United States, especially among the young.²⁵ Even among Americans who are religious believers, the number who believe in the Christian God—the God of the Bible—has declined to a slim majority.²⁶ And yet here we are: “A casebook on Christian legal thought is necessary, thinkable, and thanks to Professors Brennan and Brewbaker, more than just imaginable: it’s now in print.”²⁷ However widespread use of the casebook might become, its publication in itself is a victory.

We have tremendously enjoyed working together with Professor DeGirolami, our journal’s faculty advisor, Professors Brennan and Brewbaker, and all of our symposium contributors. We hope that the fruit of this collaborative effort will help raise

²³ For background on Garnett’s conception of moral anthropology, see Richard W. Garnett, *The Political (and Other) Safeguards of Religious Freedom*, 32 CARDOZO L. REV. 1815 (2011).

²⁴ Richard W. Garnett, “*There Are No Ordinary People*”: *Christian Humanism and Christian Legal Thought*, 56 J. CATH. LEGAL STUD. 77 (2017).

²⁵ Mark Movsesian, *Psychic Sophie and the Rise of the Nones*, FIRST THINGS (Mar. 12, 2014), <https://www.firstthings.com/blogs/firstthoughts/2014/03/psychic-sophie-and-the-rise-of-the-nones>. There are reasons why non-Christians might find the casebook illuminating, however. See Beck, *supra* note 6.

²⁶ *When Americans Say They Believe in God, What Do They Mean?*, PEW RESEARCH CENTER (Apr. 25, 2018), <http://www.pewforum.org/2018/04/25/when-americans-say-they-believe-in-god-what-do-they-mean/>

²⁷ Skeel, *supra* note 12, at 28.

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the profile of CLT and lead to its adoption as a casebook for classes in many law schools in the United States. Most of all, we are humbled and honored to make our contribution to the life of the *Journal of Catholic Legal Studies*, and it is with a sense of hope and confidence that we entrust it to a new set of editors.