

A Theological Primer

The Underlying Conventions of Theological Practice

by Dan Edwards*

Our Symposium has attempted a conversation across the boundaries of two discourse communities, each defined by its own distinct practice and each speaking its own distinct language. James Boyd White has rightly noted that to interpret (i.e., to speak) within such a practice tradition, one must belong to the community. In traditional cultures, and within the specific confines of Judaism and Islam, the practices of law and theology are so intimately connected that it is questionable whether one could actually define where one leaves off and the other begins. God is known through the presence of the Divine Will expressed in law. Within that cultural context, a conversation between law and theology is easy and natural. However, post-Reformation Christianity and the secular state have, in the terms of critical social theory, “uncoupled” these practices. That law should be able to inform theology

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is less than obvious in our culture.¹ Nonetheless, where articulate, reflective people who enjoy dual citizenship in two discourse communities gather, it seems to have been possible to speak across this boundary.

As we have spoken, we have shared an assumed sense of what constitutes legal practice and its conventions. Those assumptions have been fairly up-front. We know what legal practice is and how legal practice works. We have, however, not always been so up-front with our assumptions about the practice of theology, or even that theology is itself a "practice" in the Aristotelian sense, as Alistair MacIntyre has shown to be the case, at least within the Thomistic tradition, and I would say, across the spectrum of theology. Our presenters have, without exception, demonstrated a solid grounding in theological practice. What they have offered us is good theology. However, unless we do the ground work of clarifying the nature of theological practice, the reader who is learned in the law, but not theology, may, given the cultural context of the secularized modern West, be distracted by haunting doubts as to whether it is possible to speak across this boundary; and in the post-metaphysical age, whether it is possible to speak of theological matters at all.

For that reason, I offer this reflection as a primer on theological method and language to provide a bit of context for the presentations and to defend the project of discourse across the boundary. This seems particularly important since theology, as distinct from philosophy, works largely out of a source, "revelation," a category not commonly encountered in the law; and by means of a mode of apprehension, "faith," which is far removed from the epistemology of law practice. However, theology uses a language, "analogy," with which lawyers are intimately acquainted.

I. TRANSCENDENCE OF GOD AND THE POSSIBILITY OF THEOLOGICAL LANGUAGE

In monotheistic theology, we think of God as "transcendent." We use the word "transcendent" equivocally. It may, for example, be applied to people. We say people are self-transcending, meaning they think, feel, aspire, and are inclined to be more than they are. However, when we say God is "transcendent," we mean God is, in principle, in essence, by definition, beyond comprehension. To work with our minds, to employ

1. As for theology informing law, that is another matter. Theology has never relinquished its perhaps hegemonic presumption of authority to inform all practices. Whether members of the various discourse communities choose to listen may be another matter.

language, to study the universe with the most sophisticated science, in the hope of unveiling the “mind of God”² is like trying to map the ocean by dissecting a fish. God is not our highest thought or the farthest reach of measurement and potential experience, but rather, that which lies beyond the farthest reach. We can, within the limits of reason and experience, construct rather persuasive arguments for the proposition that reality-as-we-know-it or even could-ever-know-it lies within a matrix which we cannot know anymore than we can see our own eyes. That matrix is what Thomas Aquinas called “Being,” Meister John Eckhart called “Suchness,” Paul Tillich called the “Ground of Being,” and the post-modernist theologian, Jean-Luc Marion, calls the “Advent.”³

While good arguments (not absolute proofs) demonstrating the probable *reality* of such a matrix have been made,⁴ the very definition of transcendence means that we cannot establish the *nature* of the transcendent with logic or science. How then shall we speak of God at all?

Various answers have been offered. The following examples are by no means exhaustive, but give a sense of the main ways theologians have approached the tasks of defining a method and a language for their practice.

A. *Nature & Reason*

Thomas Aquinas relied on Aristotle to say that we could know something of God from the creation (i.e., from reality-as-we-know-it) but he held that ultimately our knowledge of and, hence, relationship with, God depended on revelation (God’s breaking into our experience to self-manifest) and that revelation is received through faith. Such faith may be supported by Reason but is not dependent on Reason. Little could be positively said about God in a direct way; but God could be spoken of by analogy to those things we do know. Some Neo-Scholastic theologians, purporting to follow Thomas, attempted to prove the bulk of Christian dogma through a natural theology, (i.e., inferences from reality-as-we-know-it). Enlightenment, skepticism, and changes in the scientific world view have unsettled medieval natural theology, but some contemporary theologians still attempt a natural theology based on modern science. Other contemporary theologians, such as David Tracy, do not operate out

2. The phrase used by physicists Paul Davies and Steven Hawking.

3. The best contemporary articulations of Transcendence are from the Kyoto School of Philosophy, particularly Keiji Nishitani and Masao Abe, who speak of God as an Absolute Nothingness which is the ground of both Being and the relative Nothingness of Western Existentialism.

4. The work of Gordon Kaufman is a prime example.

of a natural theology, but do emphasize the necessity of analogical language to bridge the gap between the knowable and the inherently mysterious.

B. Spiritual Intuition

Romantic Theology, of which Friedrich Schleiermacher was the leading spokesperson, turned then to a knowledge of God based not on natural theology or reason (in the sense of rational deduction), but on faith based on subjective experience, an intuition of spiritual truth not accessible to empirical or logical ways of knowing. Tennyson summarized this theological method, saying in response to rationalist skepticism, "I have felt."

C. Divine Dispensation

Karl Barth repudiated such subjectivity, hearkening back to faith in revelation, but limiting such revelation to the Bible as opposed to the tradition and teachings of church authority. He distrusted philosophy, science, indeed any form of human culture and turned instead to special revelatory dispensations contained in Christianity's sacred text.

D. Imaginative Social Construct

In our time, theologians such as George Lindbeck and Gordon Kaufman have regarded our claims about God as imaginative social constructs, the validity of which should be measured pragmatically. Kaufman particularly argues that such socially constructed beliefs about God are necessary to give a culture direction and meaning. Nonetheless, we should remember that the God in whom we believe, in the sense of holding an image which we worship and live toward, is our *own* creation.

II. THE IMMANENCE OF GOD AND THE POSSIBILITY OF THEOLOGICAL LANGUAGE

The corollary of monotheistic religion's definition of God as transcendent is the faith claim that God is also immanent, somehow present, accessible, knowable, and involved in our lives. It is not a matter of philosophical proof, but of existential experience, that we have a sense of God with us. Psychologists such as Sigmund Freud and Anna Maria Rizzuto have shown how experiences which are part of human life compel us to construct a "god image."⁵ Object relations theorists, such

5. From their perspective, having a god image is intrinsic to being human. Whether one likes one's god image or not, even whether one deigns to believe in one's god image or not, is another matter.

as W. W. Meissner, suggest that we inevitably have two god images, a personal subjective construct and a social construct inherited from our culture. Meissner asserts that spiritual growth happens through the struggle to correlate these two images. Structuralist Anthropologists such as Claude Levi-Strauss have shown that images of the divine, although varying in their specific form from culture to culture, occur cross-culturally as a pervasive human experience. Neurological theories are now being presented to suggest that images of God are “wired” into our very mechanism of thinking.

Theology asks whether our image of God, be it drawn from a natural theology, a religious intuition, a moral sense, a mystical experience, or a social construct, has any connection to the Transcendent Reality which monotheism defines as “God.” The proposition that God is transcendent is subject to analytical testing. The proposition that God is immanent is a faith claim regarding as a form of revelation some source, some aspect of our experience, be it subjective intuition, a sense of moral order, the authority of spiritual leaders or sacred texts, or empirical observation of the pragmatic effects of various beliefs on valued achievements (e.g., moral behavior, psychological adjustment, or physical health).

III. LEGAL PRACTICE AS REVELATION

The underlying questions for our Symposium then are whether the practice of law can serve as a source of revelation; and, if so, how that revelation is mediated. Only after addressing these questions may we begin to look for the content of the revelation.

From certain theological perspectives, it must be admitted at the outset that the contemporary practice of law cannot be a source of revelation. I cannot imagine Karl Barth turning to legal practice for authority. However, other theological methods passingly referenced in this reflection, might find the lawyer’s vocation to be a rich source of knowledge about God. Our presenters have ably demonstrated how this might work.

First, law deals with human experience in its raw immediacy. Marie Failinger’s reflections on Word and Flesh demonstrate how law reduces the abstract principles of justice (justice is deemed in all monotheistic traditions to be an attribute of God) to the personal. Her allusions to the hymnodic prelude to John’s Gospel suggest that this humanizing and personalizing of the Universal, which is the daily experience of legal practice, is the essential meaning of the Incarnation.⁶

6. Marie A. Failinger, *A Word-And-Flesh Profession*, 53 *MERCER L. REV.* 1035 (2002).

Second, legal practice gives us a source of analogy. Walter Brueggemann describes Moses and Abraham arguing before God, demanding that God be true to God's own just and merciful nature. One doubts whether the author(s) of these texts created such images out of whole cloth.⁷ Surely there had been "cases" in which human mediators reminded human sovereigns of the duties of justice and mercy which attended their sovereignty. Our image of God's justice and mercy and the necessity of mediation on behalf of the vulnerable comes to theology from primitive legal practice. It may be the duty of contemporary legal practice to remind theology of these core themes of our traditional understanding of God. One is invited to further ask whether new forms of legal practice may yield new material for analogical knowledge of the divine nature.

Third, Millard Fuller told the story of a client who had resolved to commit a murder and was stopped in his tracks by the simple question, "Are you by chance a Christian?"⁸ Thus the pragmatic force of a belief was demonstrated in the midst of ordinary legal practice. The law offers again and again the opportunity to test the efficacy of beliefs.

Finally, we remember the claim, more strongly maintained in Judaism and Islam, but also present in Christianity,⁹ that the Transcendent Ineffable God, is present to us as Divine Will for human behavior prescribed in law. Against that view, which in our secularized system could be patently idolatrous, is the perspective of those who would hold the Divine Will up as a challenge to law enacted and enforced by worldly "principalities and powers" as a prophetic confrontation. Millard Fuller's practice is a prime example. One may also think of the great lawyer-theologian William Stringfellow. Between these two perspectives is that of Richard Hooker, who followed Thomas Aquinas in seeing God's essence as relationality. In Hooker's theology of law, he argued that we grow in godliness (i.e., relationality) by struggling to find ways to live with each other in mutuality, seeking consensus on a humanly achieved justice. The discipline of discerning wisely and acting justly in the course of legal practice, working one's way through these three disparate perspectives, is nothing less than probing the Divine Will which is our nearest knowledge of God.

7. Walter Brueggemann, *The Endless Task of Interpretation*, 53 MERCER L. REV. 1019, 1023-25 (2002).

8. Millard Fuller, *Reflections*, 53 MERCER L. REV. 1137, 1147 (2002).

9. Particularly in Thomas Aquinas and John Calvin, to a lesser degree in Reinhold Niebuhr.

IV. CONCLUSION

Our presenters have offered a wealth of insights both subtle and profound. I hope that this primer, simplistic and spotty as it is, may help the reader whose familiarity with the practice of theology is not so great as her familiarity with the practice of law, to see the possibility of speaking across the boundary between these two discourse communities.

I hope that the limitations of such discourse are also clarified somewhat. The chief limitation is that theologians speak by analogy of that which we cannot speak directly. The frequent obscurity of theological speech, in contrast to the precision of legal language, reflects the difficulty of speaking in the shadow of mystery and reminds us of the necessity to speak with humility, not only before the awesomeness of our subject, but before the humanity of each other, for we are each, in James Boyd White's words, a "center of meaning." To that apt phrase, I would add one word as my own faith claim: "sacred," that is, God's presence is manifest in each person as a "sacred center of meaning." Such persons are, as Peter Ackroyd suggests, the actors, directors, and authors of the dramas which comprise legal practice; and that is what makes legal practice a potential fount of revelation.

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