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# The Mighty Work of Making Nations Happy: A Response to James Davison Hunter

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# The Mighty Work of Making Nations Happy: A Response to James Davison Hunter

Patrick McKinley Brennan\*

- I. LAW'S INFLUENCE: "MOSTLY ILLUSORY"?
- II. LAW, CULTURE, AND INSTITUTIONS
- III. LAW AND AUTHORITY
- IV. WHITHER NATURAL LAW?
- V. NATURAL LAW NOT ENOUGH
- VI. TRADITIONALISM, NOT NEO-CONSERVATISM
- VII. FROM LAW TO GRACE (AND BACK)

## I. LAW'S INFLUENCE: "MOSTLY ILLUSORY"?

The imposing honor of an invitation to respond to James Davison Hunter provided the welcome occasion to study his most recent book, *To Change the World: The Irony, Tragedy, and Possibility of Christianity in the Late Modern World*.<sup>1</sup> As I made my way through Hunter's iconoclastic work, I frequently found myself nodding in agreement, admiring the clarity of many of his insights, and anticipating the various arguments' implications for this world of ours that is, on any honest accounting, thick with law. The more I read, therefore, the more I wondered, especially as someone whose field is law, when Hunter would finally take up the topic of law, thematize law, and say how we are to use law—or not use it—"to change the world." With one partial but important exception, however, Hunter hardly mentions law except several times in passing.<sup>2</sup> The one partial exception covers approximately a page and a half in Essay II, Chapter 6, "Illusion, Irony, and Tragedy," the essence of which can be fairly captured by the following two block quotes:

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1. JAMES DAVISON HUNTER, *TO CHANGE THE WORLD: THE IRONY, TRAGEDY, AND POSSIBILITY OF CHRISTIANITY IN THE LATE MODERN WORLD* (2010).

2. I had nearly completed this response by the time I received Hunter's paper. Hunter's paper ascribes greater efficacy to law than I found him ascribing to it in the book, an inconsistency worthy of exploration that I cannot undertake here. Like the book, though, the paper never remotely considers the role for law that I develop in this essay.

The state can also address some of the legal and administrative aspects of these [i.e., social] problems and in this way either help or hinder the resolution of value-based problems. Laws that prohibit discrimination against minorities are one important illustration of the constructive influence of the state. And while politics can only do so much, it is also true that bad politics can do truly horrific things. These are all good reasons to be involved in the work of creating and maintaining good government. . . . What the state cannot do is provide fully satisfying solutions to the problem of values in our society.<sup>3</sup>

A few sentences later, Hunter continues:

At best, the state's role addressing human problems is partial and limited. It is not nearly as influential as the expectations most people have of it. It is true that laws are not neutral. They do reflect values. . . . It imputes far too much capacity to the state and to the political process.<sup>4</sup>

These are bold and contestable claims, and what Hunter writes next is important to assessing their truth value, but before unpacking the quoted language and continuing further with Hunter's line of argument, it will be helpful to offer some real-world context providing a benchmark against which to measure Hunter's argument, as well as my own competing argument.

When I sat down in early January 2012 to write this response, the news was abuzz with stories about the new constitution of Hungary<sup>5</sup> that the Hungarian Parliament approved by a 262 to 44 vote in April 2011 to take legal effect, as it did, on January 1, 2012.<sup>6</sup> What made this especially newsworthy is the fact that Hungary's new basic law is an explicitly Christian document.<sup>7</sup> Repudiating that predominantly Catholic country's Soviet-era constitution of 1949 (as amended in 1989), this new basic law begins with the following words "O Lord, blessed be the Hungarian nation" and proceeds to a formal "National Avowal of Faith" that declares in pertinent part: "We are proud that one thousand years ago our king, Saint Stephen, based the Hungarian State on solid foundations, and made our country a part of Christian Europe. . . . We acknowledge the role Christianity has played in preserving our nation."<sup>8</sup> Article Q of the section entitled "Fundamentals" establishes that the National Avowal of Faith is no mere precatory throat-clearing, but rather that "[t]he provisions of the Fundamental Law shall be interpreted in accordance with . . . the Fundamental Law's National Avowal of Faith."<sup>9</sup> The constitution prescribes a coat of arms topped by the Holy Crown of Saint Stephen I, canonized by Pope Gregory VII in 1083.<sup>10</sup> The National Avowal further declares that "after the moral defeats of the twentieth century, our need for spiritual and intellectual renewal is paramount."<sup>11</sup> In keeping with that aim,

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3. HUNTER, *supra* note 1, at 171.

4. *Id.*

5. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY] Apr. 25, 2011, *translation available at* [http://tasz.hu/files/tasz/imce/alternative\\_translation\\_of\\_the\\_draft\\_constituion.pdf](http://tasz.hu/files/tasz/imce/alternative_translation_of_the_draft_constituion.pdf).

6. See Judy Dempsey, *Hungarian Parliament Approves New Constitution*, N.Y. TIMES, Apr. 18, 2011, <http://www.nytimes.com/2011/04/19/world/europe/19iht-hungary19.html>.

7. *New Hungarian Constitution Leads the Way*, MUNDABOR'S BLOG (Apr. 26, 2011), <http://mundabor.wordpress.com/2011/04/26/new-hungarian-constitution-leads-the-way/>.

8. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY] Apr. 25, 2011, National Avowal of Faith, *translation available at* [http://tasz.hu/files/tasz/imce/alternative\\_translation\\_of\\_the\\_draft\\_constituion.pdf](http://tasz.hu/files/tasz/imce/alternative_translation_of_the_draft_constituion.pdf).

9. *Id.* art. Q.

10. *Id.* art. I.

11. *Id.* at National Avowal of Faith.

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

Article II provides as follows: “Human dignity shall be inviolable. Everyone shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.”<sup>12</sup> Article K(1) declares, moreover, that “Hungary shall protect the institution of marriage, understood to be the conjugal union of a man and a woman based on their independent consent; Hungary shall also protect the institution of the family, which it recognizes as the basis for survival of the nation.”<sup>13</sup> And Article XV protects parental rights against state interference: “Parents shall have the right to choose the upbringing to be given to their children.”<sup>14</sup>

Will this new law change the world? Its opponents fear what those who enacted the law and the law’s other proponents hope and intend. To take just three of countless possible examples, Human Rights Watch declared that “Hungary [is] at odds with its obligation to uphold and respect human rights.”<sup>15</sup> Second, Neurope.eu reported that the new Hungarian constitution “offers the real prospect of banning both abortion and gay marriages, a concern shared by human rights groups.”<sup>16</sup> Third, Amnesty International maintained that the Hungarian constitution “violates international and European human rights standards,” citing the clauses on fetal protection and marriage and the fact that sexual orientation is not covered by the constitution’s anti-discrimination clause.<sup>17</sup> The culture did not suddenly shift on January 1, 2012, but the law did change.<sup>18</sup>

Hunter’s book is not about Hungary: “The subject of these essays is the social imaginary that serves as a backdrop for the ways in which the majority of those in America who call themselves Christian engage the world.”<sup>19</sup> Hunter’s claims about law’s limits are not so carefully circumscribed, however, as the following language demonstrates: “[L]aws cannot generate values, or instill values, or settle the conflict over values. The belief that the state could help us care more for the poor and the elderly, slow the disintegration of traditional values, generate respect among different groups, or create civic pride, is mostly illusory.”<sup>20</sup> Taking the former of these two sentences first, it is not clear what Hunter means to deny when he asserts that laws cannot “generate,” “instill,” or “settle the conflict over” “values.”<sup>21</sup> But this much is clear: The new Hungarian constitution will teach in favor of some conduct and against other conduct (law’s pedagogical function); it will encourage some conduct and forbid other conduct, including by rewarding some conduct and punishing other

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12. *Id.* art. II.

13. *Id.* art. K(1).

14. *Id.* art. XV(2).

15. *Hungary: New Constitution Enshrines Discrimination*, HUMAN RIGHTS WATCH (Apr. 19, 2011), <http://www.hrw.org/news/2011/04/19/hungary-new-constitution-enshrines-discrimination>.

16. Cillian Donnelly, *EU Asked to Intervene in “Worrying” Hungarian Constitution*, NEW EUROPE (Apr. 10, 2011), <http://www.neurope.eu/article/eu-asked-intervene-worrying-hungarian-constitution>.

17. *Hungary: Newly Adopted Constitution at Odds with Human Rights*, AMNESTY INT’L (Apr. 20, 2011), <http://www.amnesty.org/en/library/asset/EUR27/006/2011/en/b528abb2-32a6-4615-858a-5eeff13f369f/eur270062011en.html>.

18. See *supra* note 6 and accompanying text. The Left has made a sport of attacking Hungary’s return to its Catholic roots. See Marion Smith, *Crusade Against Hungary*, NAT’L REV. ONLINE (Mar. 5, 2012, 4:00 A.M.), <http://www.nationalreview.com/articles/292541/crusade-against-hungary-marion-smith>.

19. HUNTER, *supra* note 1, at 5.

20. *Id.* at 171. It is difficult to square the book’s resounding “mostly illusory” claim with the following claim by Hunter in his paper: “Law does the work that social mores used to do . . . .” James Davison Hunter, *Law, Religion and the Common Good*, 39 PEPP. L. REV. 101, XXX (2012). I think the truth is somewhere in the middle. Law does some of the work social mores used to do, nor, *pace* Hunter, do I consider this necessarily a bad thing, for reasons to which I come below.

21. HUNTER, *supra* note 1, at 171.

conduct (law's ordering function); and it will do so definitively, at least for a time (law's dispute-resolving function). Those wishing to enter into same-sex marriage or to procure abortion will now have fewer opportunities to pursue their preferences under this law in Hungary than under the laws that are common throughout the rest of Europe.<sup>22</sup> It is thus at best an exaggeration to assert, as Hunter does in the second quoted sentence, that "[t]he belief that the state could help us . . . slow the disintegration of traditional values . . . is mostly illusory."<sup>23</sup>

## II. LAW, CULTURE, AND INSTITUTIONS

Law and other state action do not spring from nowhere, of course, which is part of Hunter's important thesis about the nature and workings of culture; they are conditioned by the entire ensemble of reasons people have for action, especially including institutionally entrenched and reinforced reasons.<sup>24</sup> Sometimes laws are ignored, evaded, distinguished, or civilly disobeyed, but other times they are followed to the letter or with deep dedication to the purposes behind them. I consider Hunter's abstract, sweeping, and sparsely defended claims about law's inefficacy to be a non sequitur from his sound and more basic thesis that changing culture—indeed, changing the world—is not just about changing minds and hearts, it is also about extensively changing institutions. “[*T*he key actor in history,” Hunter argues, “is not individual genius but rather the network and the new institutions that are created out of those networks.”<sup>25</sup> One of the signal contributions of Hunter's book is to illuminate the work of institutions in changing culture, though for reasons that will become clear later, I think he overlooks *the* institution that is necessary truly to change the culture for the better, and of course law determines, in major part, which institutions can exist and thrive.

Hunter writes that “[l]egislation may be passed and judicial rulings may be properly handed down, but legal and political victories will be short-lived or pyrrhic without the broad-based legitimacy that makes the alternatives seem unthinkable.”<sup>26</sup> Again, law's efficacy is indeed affected by the culture from which it emerges, and a law that is too far out of step will fail to achieve the legislator's intent. And such failure, moreover, would represent a serious demerit on the part of the lawmaker, for it is the essence of the lawmaker's function *to move* the people (toward the common good).

I consider exactly wrong, however, Hunter's further claim that law must render its alternatives “unthinkable.” One of the things we know, indeed sometimes fear, about the lawmaker is that he (or they) often make a definitive choice among competing goods—things could have been other than they now will be. It is the breathtaking distinction of the lawmaker that his rational choice enacted into law determines some of which goods the multitude will achieve and which it will not. The availability of the corporate legal form, for example, determines how capital can be amassed and retained; as the advocates of campaign finance reform never tire of inveighing, it makes a real difference. An alternative law may come later and repeal the former, and the eventuality of such a turn of events scandalizes no one, nor is the pro tempore efficacy of the former law necessarily reduced by this eventuality. The U.S. Constitution is a very efficacious document, and its current efficacy is not reduced by the possibility of fervent prayers and other work on behalf of amendment and better interpretations.

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22. See *supra* notes 12–13 and accompanying text.

23. HUNTER, *supra* note 1, at 171.

24. *Id.* at 32–47.

25. *Id.* at 38.

26. *Id.* at 36.

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

To conclude my first point, then, Hunter unjustifiably devalues the institutional role of the lawmaking state and the laws it can, if it chooses, make and enforce, thus changing the world. Again, the lawmaker's role and possibility of success are indeed contingent on a host of facts, but "mostly illusory" *tout court?* That case has not been made in his book or his paper. On the contrary, and as I suspect Hunter would be among the first to concede, exactly what many find so very threatening about the state is, again, its capacity *authoritatively* to limit and shape through law the very choices we as individuals and members of communities can make about how we shall live.

### III. LAW AND AUTHORITY

I say I "suspect" Hunter would concede the preceding point because authority is not a concept Hunter pauses to analyze even as little as he analyzes the concept of law.<sup>27</sup> Hunter assumes we know what authority is, or rather *was*, and asserts, in the context of his discussion of "The Challenge of Faithfulness," that its sources are gone now:

There are no fixed points of reference. What is more, there is no authority that can be appealed to in order to definitively establish the meaning of words or to adjudicate which meaning is more truthful or better than another. God? Nature? Science? Democracy? Tradition? None of these sources of authority can be trusted because each one exists under the same questioning gaze—they too are words that have been emptied of meaning.<sup>28</sup>

Hunter thus proffers a menu of five "sources of authority" that are said to be no longer available, but what struck me immediately upon reviewing the menu is, first, how different among themselves the five items are and, second, how far each of them is from what I take to be the focal case of authority in traditional usage.

As to the second point, it is common to define authority as legitimate power,<sup>29</sup> and thus we refer to the civil ruling authority, to the teaching authority of the Church, and so forth, and by this we mean that each is a *legitimate* source of power, not a usurpation, a band of thieves, or a power grab.<sup>30</sup> Hunter's usage is non-standard, as a comparison of his five "sources" with the common understanding of authority as *legitimate* power reveals. First, it is not common to refer to God as *an* authority; He is *the* sovereign because he is omnipotent.<sup>31</sup> "Jesus came and told his disciples, 'I have been given all authority in heaven and on earth'"<sup>32</sup> and it is thus that from Him all authority comes.<sup>33</sup> God is *the* source of authority, not *a* "source of authority"

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27. See *supra* note 2 and accompanying text.

28. HUNTER, *supra* note 1, at 206.

29. See, e.g., BERNARD J.F. LONERGAN, *Dialectic of Authority*, in *A THIRD COLLECTION: PAPERS BY BERNARD J.F. LONERGAN*, S.J. 5, 5 (Frederick E. Crowe ed., 1985).

30. See, e.g., BERNARD COOKE, *POWER AND THE SPIRIT OF GOD: TOWARD AN EXPERIENCE-BASED PNEUMATOLOGY* 50 (2004).

31. *Id.*

32. *Matthew* 28:18.

33. *Romans* 13:1 ("Let everyone be subject to the governing authorities, for there is no authority except that which God has established.")

among others.<sup>34</sup> This difference will be important to my argument later. Second, nature is not a “source of authority,” not a source of power in need of being legitimated. Nature is normative, if at all (as I believe it to be), simply by virtue of its hierarchy of ends, and, for that reason, persons in positions of authority can give just, coercive effect to that normativity.<sup>35</sup> Third, science is not a “source of authority”; the modern mind commonly idolizes science as an *alternative* to authority.<sup>36</sup> Next, democracy is not a “source of authority”; democracy, as commonly understood, is majoritarian rule, allegedly based on the “consent”<sup>37</sup> of the governed, and often celebrated, in fact, as no longer in need of reliance on authority such as that of the Magisterium of the Catholic Church.<sup>38</sup> Fifth and finally, tradition is not per se a “source of authority,” though common usage is admittedly more varied in this case. As commonly understood, tradition is the normative inheritance within which persons in positions of authority (and other persons) take decisions, and those decisions being infused and shaped by tradition is frequently said to make them authoritative.<sup>39</sup>

To return to the first point mentioned above, then, Hunter has lumped together under the umbrella of “sources of authority” five very diverse phenomena, *some* of which are in fact, *pace* Hunter, “trusted” today in the world we inhabit. That is, they provide the bases for individual and collective action that are sometimes regarded as good and sufficient, that is, legitimate. The trouble is that the menu Hunter offers does not make it possible to specify the exact common element of “authority” that he claims has gone missing in the modern world. Hunter’s claim seems underdeveloped. To be sure, Hunter’s trope is familiar and, at a certain level of generality, commonplace. Hannah Arendt long ago lamented the disappearance of authority from the modern world,<sup>40</sup> and so constructive work on how to satisfy the conditions of authority in the modern world is a most worthy undertaking.<sup>41</sup> It is not mere nit-pickery, however, to ask of a book that sounds an ominous warning about power—to which I am coming—that it specify exactly why brute power can no longer be made legitimate and thus be transmuted into authority. In sum, by taking the concept of authority too easily, Hunter exaggerates or otherwise falsifies the problem of power.

Before turning to Hunter’s warning about power, one further clue to what Hunter means by authority will be helpful, especially as it concerns law in particular. Shortly after his lament about the disappearance of “sources of authority” that can be “trusted,” Hunter states the following by way of example of the phenomenon

34. *Id.*; cf. MARK C. MURPHY, AN ESSAY ON DIVINE AUTHORITY 63 (2002) (exploring the sense in which the divine authority is contingent on the practical reasoning of individuals).

35. I need to qualify my point by acknowledging that sometimes nature’s normativity is said to be a “natural authority.” See Michael J. White, *The Disappearance of Natural Authority and the Elusiveness of Nonnatural Authority*, in *CIVILIZING AUTHORITY: SOCIETY, STATE, AND CHURCH* 21, 21–33 (Patrick McKinley Brennan ed., 2007).

36. See JEFFREY STOUT, *THE FLIGHT FROM AUTHORITY: RELIGION, MORALITY, AND THE QUEST FOR AUTONOMY* (1981).

37. I put scare-quotes around consent because I consider it to be a dangerous fiction that the people either can or must consent to ruling authority. Even John Locke, who championed the modern idea that government is based on the consent of the governed, was at pains to show how such a thing was plausibly possible. See 2 H.R. FOX BOURNE, *THE LIFE OF JOHN LOCKE* 175 (1876). The better view is that “everyone must submit himself to the governing authorities.” *Romans* 13:1.

38. See RONALD INGLEHART & CHRISTIAN WELZEL, *MODERNIZATION, CULTURAL CHANGE, AND DEMOCRACY: THE HUMAN DEVELOPMENT SEQUENCE* 26 (2005). David Estlund argues that democracy derives authority from its ability to “tend” toward producing good decisions, but specifically denies that actual political decisions being good or correct is relevant to the question of authority. Truth must be made “safe” for democracy. DAVID M. ESTLUND, *DEMOCRATIC AUTHORITY: A PHILOSOPHICAL FRAMEWORK* 24 (2008).

39. See GUNNAR SKIRBEKK & NILS GILJE, *A HISTORY OF WESTERN THOUGHT: FROM ANCIENT GREECE TO THE TWENTIETH CENTURY* 313–14 (2001).

40. Hannah Arendt, *What Was Authority?*, in *AUTHORITY: NOMOS I*, at 81 (Carl J. Friedrich ed., 1958).

41. See, e.g., *AUTHORITY: A PHILOSOPHICAL ANALYSIS* (R. Baine Harris ed., 1976); GEORGE C. CHRISTIE, *LAW, NORMS AND AUTHORITY* (1982); RICHARD T. DEGEORGE, *THE NATURE AND LIMITS OF AUTHORITY* (1985); LESLIE GREEN, *THE AUTHORITY OF THE STATE* (1988); JOSEPH VINING, *THE AUTHORITATIVE AND THE AUTHORITARIAN* (1986).

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

he has in mind, but has not defined: “Thus, in the field of literature such skepticism has come to reject the finality of the text or the authority of the author. In law it has come to repudiate the immutability of constitutions and declarations and the legitimacy of law itself.”<sup>42</sup> Hunter makes this claim as part of his larger claim about the disappearance of “sources of authority,” which disappearance is caused, so the story goes, by a certain sort of “skepticism” that, as it operates in or on law, disables “the immutability of constitutions.”<sup>43</sup> To be sure, it is not open to reasonable doubt that there is more skepticism today than there once was, and there is no mystery concerning why this declension would reduce the availability of “authority” as commonly understood. What Hunter has not established, however, is the significance of “repudiat[ing] the immutability of constitutions.”<sup>44</sup>

What would it mean to assert that a particular constitution is “immutable”? What individual or group has written such a thing? And why would an allegedly “immutable” constitution be a good thing, as Hunter implies it would be?<sup>45</sup> Given the incontestable fact that “knowledge makes a slow, if not a bloody, entrance,”<sup>46</sup> a phenomenon from which the minds of framers of constitutions are not exempt, allegations of immutability—and that is all they can amount to, allegations—risk being a fig leaf for authoritarianism. It is possibly an extension of this misplaced linkage between constitutionalism and immutability that leads Hunter to diagnose our culture, as he did in the language quoted above, with a repudiation of “the legitimacy of law itself.”<sup>47</sup> Here again, I am afraid I do not see Hunter’s claim borne out in the world. The conspicuous and much-commented proliferation of law in our culture falsifies Hunter’s claim, and the fact that our many laws could have been different than they are does not, in my experience and observation, lead to skepticism about law’s legitimacy. To be sure, there are out there a few of what H.L.A. Hart referred to as “disappointed absolutists,”<sup>48</sup> those who are scandalized that there is no unbending rail that provides surety for judgments made in law. But, for reasons to which I shall come, I judge such disappointment to be *toto caelo* preferable to the wooden worship of enshrined texts of human devising.

#### IV. WHITHER NATURAL LAW?

First, however, we must return to the progression of Hunter’s larger argument leading to the book’s defense of “faithful presence” as the path for Christians to take in order “to change the world” (though, as we shall see, without actually hoping to change that world in any particular way). Earlier, I anticipated language of Hunter that is important for assessing the truth value of his claims about law’s promises being “mostly illusory.” Here is that language:

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42. HUNTER, *supra* note 1, at 207.

43. *Id.*

44. *Id.*

45. *Id.*

46. BERNARD J.F. LONERGAN, *INSIGHT: A STUDY OF HUMAN UNDERSTANDING* 186 (3d ed. 1970).

47. HUNTER, *supra* note 1, at 207.

48. H.L.A. HART, *THE CONCEPT OF LAW* 139 (2d ed. 1994).



Values cannot be achieved politically because politics is invariably about power—not only power, but finally about power. For politics to be about more than power, it depends on a realm that is independent of the political sphere. It depends on moral criteria, institutionalized and practiced in the social order, that are autonomous from the realm of politics. The problem is that the impulse toward politicization extends to the politicization of values. This means that the autonomy of moral criteria on which a higher practice of politics depends is increasingly lost.<sup>49</sup>

Hunter elaborates with some examples:

Today, most of the ideals and values that are discussed in public have acquired political content and connotation. Fairness? Equity? Justice? Liberty? These have come to have little or no meaning outside of the realm of politics. . . . Decency, morality, hope, marriage, family, and children are important values but they have become political slogans.<sup>50</sup>

“The irony, of course,” Hunter continues,

is that no group in American society has done more to politicize values over the last half century, and therefore undermine their renewal, than Christians—both on the Right (since the early 1980s) and on the Left (during the 1960s and 1970s). Both sides are implicated and remain implicated today.<sup>51</sup>

The accusatory quality of these last words, the substance of which appears throughout the book in other formulations, cannot but cause the Christian reader—and others, of course—to sit up and pay attention. Also arresting are Hunter’s immediately preceding condemnations of Christians’ willingness to let what they care about—that is, their “values,” as Hunter almost invariably refers to them—become ideological footballs on the field of politics.<sup>52</sup> And truly bracing is Hunter’s positive thesis, which I shall repeat here: “*For politics to be about more than power, it depends on a realm that is independent of the political sphere. It depends on moral criteria, institutionalized and practiced in the social order, that are autonomous from the realm of politics.*”<sup>53</sup> But what are those criteria? Where do they come from? How can they be, and why must they be, independent of politics? Here again, as with his treatment of law and authority, what Hunter does not say performs almost as much work as what he does say, but I shall start by summarizing what Hunter does say in terms about those independent criteria that provide the basis of the “alternative way” Christians should take in the world.

Hunter begins by affirming, thank God, that “goodness, beauty, and truth remain in this fallen creation.”<sup>54</sup> Further, he explains:

[P]eople of every creed and no creed have talents and abilities, possess knowledge, wisdom, and inventiveness, and hold standards of goodness, truth, justice, morality, and beauty that are, in relative

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49. HUNTER, *supra* note 1, at 172. I agree with historian Thomas Bisson that it is “inadvisable to follow recent social scientists and their adherents in referring to all relations of power as ‘political,’ a usage not merely negligent of the classical etymology but also . . . oblivious to one of the salient shifts in the social experience of medieval power.” THOMAS N. BISSON, *THE CRISIS OF THE TWELFTH CENTURY: POWER, LORDSHIP, AND THE ORIGINS OF EUROPEAN GOVERNMENT* 19 (2009).

50. HUNTER, *supra* note 1, at 172.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 231.

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

degree, in harmony with God's will and purposes. These are all gifts of grace that are lavished on people whether Christian or not.<sup>55</sup>

And "[t]here is more," he continues:

As a backdrop to all of this [work of grace], there is a natural life originating in creation and a natural order in things that can be understood, developed, and enjoyed. The dazzling processes of growth in a tree or a bug or a newborn baby, the intricacies of molecular biology, the stunning ordered-complexity of mathematics, and the underlying logic of music all speak of an order that God has created and that has not been effaced by the fall, that people can discover and take pleasure in as well.<sup>56</sup>

The reader might at this point be tempted to conclude that the natural law will form a significant part of the basis of Hunter's "alternative way" for Christians, but then Hunter drops a footnote:

For my part, I take a minimalist view of "natural law." There are at least two problems with the maximalist view. First, if the laws of nature were so obvious, why is it that so few see these laws? The second reason is that much mischief has been done in the name of natural law, mischief that has legitimated political structures and social relationships that even the most conservative would now judge as not so natural.<sup>57</sup>

This last implication, that being "conservative" (as opposed to what?) has something to do with the significance of admitting that humans have made mistakes about the contents of the natural law, is obscure. Be that as it may, no respectable defender of the natural law cannot but agree with Jacques Maritain's observation:

That every sort of error and deviation is possible in the determination of these things [required by natural law] merely proves that our sight is weak and that innumerable accidents can corrupt our judgment. . . . All this proves nothing against natural law, any more than a mistake in addition proves anything against arithmetic.<sup>58</sup>

We need, then, to ask: What is the natural law and what are its contents? Is the natural law the same as "the laws of nature," a term Hunter uses interchangeably, whereas in common usage they usually (though not always) have different referents? Also obscure is the meaning of Hunter's distinction between "maximalist" and "minimalist" theories or accounts of the natural law, except as a way of dismissing the importance of inquiring into that law's contents.<sup>59</sup> "[W]hy is it that so few know these laws?" Hunter asks (rhetorically?). Saint Thomas Aquinas pointed to the consequences of human sinfulness on our willingness to seek and our

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55. *Id.* at 232.

56. *Id.*

57. *Id.* at 332 n.9.

58. JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 63 (1971).

59. HUNTER, *supra* note 1, at 332 n.9.

ability to know the natural law.<sup>60</sup> He did not for that reason, however, understand humanity to enjoy a dispensation from seeking to know and follow the natural law. Hunter takes things entirely too easily with his casual assumption that the natural law is known by “see[ing].” Bernard Lonergan has registered the disservice to worthy human living that is done by imagining that the hard work of human knowing is adequately conceptualized by an ocular metaphor.<sup>61</sup> As I observed above (quoting Lonergan), “knowledge makes a slow, if not a bloody, entrance,” and this fact should not be transmuted into a justification for nescience.<sup>62</sup>

In any event, an adequate account of Christians’ way forward in the world fairly deserves more than a four-sentence footnote devoted to dismissing or minimizing the contribution of the natural law.<sup>63</sup> The natural law is not a Popish invention,<sup>64</sup> though I eagerly admit to a Popish project to encourage theorizing about the divine natural law so as to increase our knowledge and understanding of it. That said, I also think, for reasons to which I shall come, that due caution is in order about what we can expect from knowledge of the natural law, with a corresponding need for remedies.<sup>65</sup>

This is not the place for a full-dress account of the place of the natural law in human lawmaking, but we do need to say just slightly more than Hunter has about that law exactly in order to provide a critical context for evaluating one of Hunter’s most startling claims. On the classical account of the natural law rendered by Saint Thomas Aquinas, that law’s first precept is that the good is to be done and pursued and evil avoided.<sup>66</sup> It is no oversimplification to say that humans are always to be acting for the good, and avoiding evil, for this is what God commands by the natural law. Human lawmaking itself is just one component of a fulfillment of the command to do and pursue the good and avoid evil. Human laws are derived from the natural law, by way of specification or application, precisely in order to assist the community in achieving the common good and individual goods.<sup>67</sup>

With this briefest of sketches in mind, consider the following claim Hunter makes a few lines from the end of the book: “By making a certain understanding of the good in society the objective, the source of the good—God himself and the intimacy he offers—becomes nothing more than a tool to be used to achieve that objective,” that is, the object to “change the world.”<sup>68</sup> This warning comes as a part of Hunter’s larger warning against thinking that “the world . . . can be controlled and managed.”<sup>69</sup>

Put that way (“controlled and managed”), who is likely to disagree? But what Aquinas says is that it is the dignity of the human person that he can be provident for himself and for others.<sup>70</sup> On all creation except the

60. ST. THOMAS AQUINAS, *THE COMMANDMENTS OF GOD* 1–3 (Laurence Shapcote trans., 1937).

61. LONERGAN, *supra* note 46, at 320, 416. I am afraid Jacques Maritain, in the language quoted above, is guilty of the same oversimplification, but he is generally very attentive to epistemological complexity, though not in a way that would fully satisfy Lonergan.

62. *Id.* at 186.

63. *See supra* note 57 and accompanying text.

64. The place of the natural law in Reformed social thought is well presented in DAVID VANDRUNEN, *NATURAL LAW AND THE TWO KINGDOMS: A STUDY IN THE DEVELOPMENT OF REFORMED SOCIAL THOUGHT* (2010).

65. *See infra* notes 68–72 and accompanying text.

66. ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* pt. I-II, q. 94, art. 2, at 43 (Fathers of the English Dominican Province trans., 2d ed. 1927).

67. *See* Patrick McKinley Brennan, *Law in a Catholic Framework*, in *TEACHING THE TRADITION: CATHOLIC THEMES IN ACADEMIC DISCIPLINES* 437, 448 (John J. Piderit & Melanie M. Morey eds., 2012).

68. HUNTER, *supra* note 1, at 285.

69. *Id.*

70. AQUINAS, *supra* note 66, q. 91, art. 2, at 11 (“Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.”).

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

rational person, God's providence works exclusively through causality. On the rational person, however, God works not just through causality, but also by giving a law that the rational person is to follow in his *freedom*.<sup>71</sup> Following that law means doing good in the world, or at least trying to do the apparent good. Because the good *always is particular*, always concrete and not abstract, those following the natural law have no honest choice but to "mak[e] a certain understanding of the good in society the objective"<sup>72</sup>—not, however, as an alternative to God or to instrumentalize the Almighty, but exactly to obey His command and thereby to become the people He lovingly wills us to become, both in this life and in the next. It is God's will that we act for the temporal common good and the supernatural common good, and to do so is our glory, not our demotion to bureaucrats employed at a cosmic Dunder Mifflin.

Hunter's premature burial of the natural law does nothing less than hide essential workings of divine providence. No doubt "much mischief" has come from mistakes about the natural law, but what possible warrant do we have to reduce the number of mistakes about a divine law by defiantly refusing to try to know it so as to live by it?

#### V. NATURAL LAW NOT ENOUGH

But is knowledge of the natural law enough? Not everyone thinks so. "[N]othing but the gospel of Jesus Christ will effect the mighty work of making nations happy."<sup>73</sup> Who is the author of this sentence from which my title borrows? A Pope? A theologian? An unwashed theocrat? No, Benjamin Rush, a signer of the Declaration of Independence, a member of the Continental Congress, and the most eminent American physician of his day—and something of a theocrat (though I consider the word to be too prejudicial to be of much assistance), nonetheless.<sup>74</sup> The preceding quotation is from a letter he wrote to John Adams.<sup>75</sup> The following quote comes from a letter to Noah Webster in 1798:

But Alas! my friend, I fear all our attempts to produce political happiness by the solitary influence of human reason, will be as fruitless at [as] the search for the philosopher's stone. It seems to be reserved to Christianity alone to produce universal, moral, political and physical happiness. Reason produces it is true, great and popular truths, but it affords *motives* too feeble to induce mankind to act agreeably to them. Christianity unfolds the same truths and accompanies them with *motives*, agreeable powerful & irresistible. I anticipate nothing but suffering to the human race while the present systems of paganism, deism and atheism prevail in the world.<sup>76</sup>

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71. See JOHN RZIHA, PERFECTING HUMAN ACTIONS: ST. THOMAS AQUINAS ON HUMAN PARTICIPATION IN ETERNAL LAW 29–112 (2009).

72. HUNTER, *supra* note 1, at 285.

73. GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 366 (1991) (quoting Benjamin Rush). Section V. of this article is deeply indebted to CHRISTOPHER FERRARA, LIBERTY: THE GOD THAT FAILED (forthcoming 2012) (with a preface by Patrick McKinley Brennan).

74. *Id.*

75. *Id.* at 430 n.59.

76. Letter from Benjamin Rush to Noah Webster (July 20, 1798), in 1 NOTES ON THE LIFE OF NOAH WEBSTER 466 (Emily Ellsworth Ford Skeel ed., 1912). I owe this citation to Christopher J. Ferrara.

Every American child—or at least nearly every one of them that has not been home-schooled—has been instructed by the standard textbooks to celebrate how our fabled Founders had set out to create something without precedent in history, the *Novus Ordo Seclorum*. In James Madison’s words, in Federalist No. 14, it was the glory of the people of America to have “accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. . . . If their works betray imperfections, we wonder at the fewness of them.”<sup>77</sup> It was the Founders’ boast that the new order was to be founded on reason alone, not on the truths of Christianity. Rush was not alone among the Founders, however, in giving the lie to what reason, unchastened and untutored by Christianity, can accomplish in politics.<sup>78</sup> A number of the Founders came to doubt or even reject the possibility of a nation founded solely on reason. They include, in addition to Rush and Webster, John Jay, and Elias Boudinot.<sup>79</sup>

I would not wish to be seen to be exaggerating the number of Founders who changed their mind about what they had wrought;<sup>80</sup> I have not studied the question in detail, and the point is emphatically not to count noses—the question of God’s rightful place in politics in principle is precisely *not* a question to be answered by a majority vote. It is interesting to observe, though, that the error in thinking that politics that makes men happy can be founded on pure reason was also apparent to an impressive but little-remembered group known as the National Reform Association (NRA), a movement of conservative evangelical Protestant ministers, theologians, academics, lawyers, and jurists, mostly Presbyterians, beginning in the mid to late nineteenth century.<sup>81</sup> During and after the Civil War, these men coalesced around the proposition that that war and many other social evils could have been avoided by a proper constitutional acknowledgment of God and the subordination of politics to divine law. As legal historian John Witte, Jr., notes: “A reference to ‘the Year of our Lord’ sneaks into the dating of the instrument. But nothing more. The ‘Godless Constitution’ has been both celebrated and lamented ever since.”<sup>82</sup> The members of the NRA were among the lamenters, and in 1874 they sought to remedy this capital defect in the Constitution. In a memorial and petition they presented to Congress, they proposed that the Constitution’s Preamble be amended to read as follows:

We the People of the United States, [humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, his revealed will as the supreme law of the land, in order to constitute a Christian government,] and in order to form a more perfect union . . . .<sup>83</sup>

Needless to say, the Preamble went unamended. More interesting is how this group of Protestants had reached essentially the same conclusions that Catholics summarize under the mantle of the “Social Kingship” of Christ, namely, that inasmuch as Christ is God and king, the Gospel must undergird and limit the laws and institutions

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77. THE FEDERALIST No. 14 (James Madison).

78. WOOD, *supra* note 73, at 366.

79. *Id.*

80. After mentioning Rush and the other names recorded above, Gordon Wood adds this:

Many others, of course, never went that far. But the numbers of old revolutionaries who lost faith in what the Revolution had done is startling: from James Warren and Samuel Adams to David Ramsay, Light-Horse Harry Lee, and Christopher Gadsden. At the end of his life, George Washington had lost all hope for democracy.

*Id.*

81. I owe my familiarity with the NRA to the work of Christopher A. Ferrara.

82. JOHN WITTE, JR., RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT: ESSENTIAL RIGHTS AND LIBERTIES 61 (2000).

83. See FERRARA, *supra* note 73.

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

of political society.<sup>84</sup> The NRA grasped the truth that the Church has taught all along, that it is incoherent to hold that only individuals, but not societies, are subject to divine law. “Men living together in society are not less subject to God than they are as individuals, and civil society, no less than individual human beings, is in debt to God, ‘who gave it being and maintains it, and whose ever-bounteous goodness enriches it with countless blessings.’”<sup>85</sup>

Insightful though the NRA was about the need for the human juridical order to subordinate itself to the divine legal order, the movement was destined for terminal incoherence, and in ways that link up with Hunter’s argument on behalf of “institutionalized” presence as to how Christians should live in the world and, perhaps, change it. Unable to identify any earthly spiritual authority higher than a (possible) consensus of human consciences, the NRA was reduced to advocating a Christian moral order determined by majoritarianism, which of course only reduplicates the problem of the mere majoritarianism of the Godless Constitution. Orestes Brownson, a renowned Protestant convert to Catholicism, had identified the problem already in 1845, and had offered what he regarded as the only solution available:

The Protestant sect governs its religion, instead of being governed by it. . . . Protestantism cannot govern the people,—for *they* govern *it*. . . . The Roman Catholic religion, then, is necessary to sustain popular liberty, because popular liberty can be sustained only by a religion free from popular control . . . speaking from above and able to command them,—and such a religion is the Roman Catholic.<sup>86</sup>

What Brownson contends is necessary to authentic human liberty, then, is what is sometimes celebrated under the label of Christendom, but more often condemned, as by Hunter, under such labels as “Constantinian error.”<sup>87</sup> On the traditional Catholic account, the Church and state are united without being reduced either to the other, the Church being the conscience of the state and the soul of the body politic. And the Church’s role as conscience is not limited to teaching the natural law authoritatively, but also include teaching the divine law authoritatively and to directing the state in matters that fall under the care and jurisdiction of the Church. Authoritatively interpreted by the Church and taught to the state, the divine positive law—that is, the law of Moses and the law of Christ, not just the divine natural law—comes to provide the ultimate basis and limit of state action and human law, with high hope for the consequences for culture and society and, of course,

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84. The classic modern exposition of this doctrine is PIUS XI, ENCYCLICAL LETTER *QUAS PRIMAS* (1925).

85. ALFREDO CARDINAL OTTAVIANI, DUTIES OF THE CATHOLIC STATE IN REGARD TO RELIGION 7–8 (Danis Fahey trans., Angelus Press 1993).

Just as the individual human being, so too is the state bound by God’s moral law; the Church is the divinely appointed teacher and interpreter of this moral law, whose teachings and interpretations thereof are, therefore, binding on everyone, including the state—and, indeed, on principle and without exception, every state. Just as the individual human being, so too is the state, in the final analysis, possessed of a supernatural last end.

George W. Shea, *Catholic Orientations on Church and State*, 125 AM. ECCLESIASTICAL REV. 405, 415 (1951).

86. Orestes Brownson, *Catholicity Necessary to Sustain Popular Liberty*, BROWNSON’S Q. REV., Oct. 1845, available at <http://orestesbrownson.com/108.html> (emphasis added). Brownson did some occasional backsliding later. See JOHN T. MCGREEVY, CATHOLICISM AND AMERICAN FREEDOM: A HISTORY 43–49, 66–68, 88–90 (2003).

87. HUNTER, *supra* note 1, at 153.

ultimately, human happiness and the salvation of souls.<sup>88</sup> Aquinas explains why it is necessary that the divine positive law was given even though the divine natural law had already been promulgated, and the reasons apply at least as much to states as they do to individuals:

It was fitting that the Divine law should come to man's assistance not only in those things for which reason is insufficient, but also in those things in which human reason may happen to be impeded. Now human reason could not go astray in the abstract, as to the universal principles of the natural law; but through being habituated to sin, it became obscured in the point of things to be done in detail. But with regard to the other moral precepts, which are like conclusions drawn from the universal principles of the natural law, the reason of many men went astray, to the extent of judging to be lawful, things that are evil in themselves. Hence there was need for the authority of the Divine law to rescue man from both these defects. Thus among the articles of faith not only are those things set forth to which reason cannot reach, such as the Trinity of the Godhead; but also those to which right reason can attain, such as the Unity of the Godhead; in order to remove the manifold errors to which reason is liable.<sup>89</sup>

The divine law provides a remedy for human failure to know the natural law, and the state ignores the proffered remedy at its peril.

This, in brief, is neither more nor less than the traditional Catholic understanding of Church and state, and it provides an alternative *institutionalized* way for Christians to change the world. Hunter's church functions principally, if not exclusively, in diaspora. On the traditional Catholic account, by contrast, the Church functions corporately as well as through the members of the body. If someone should object that one hears very little about this traditional understanding from Catholics and from the Magisterium itself in recent years, I would demur, noting however that the Second Vatican Council unequivocally and authoritatively taught the following in *Dignitatis Humanae, The Declaration on Religious Liberty*: "The sacred Council . . . leaves intact the traditional Catholic teaching on the moral duty of individuals and societies towards the true religion and the one Church of Christ."<sup>90</sup>

## VI. TRADITIONALISM, NOT NEO-CONSERVATIVISM

"Most conservative Christians," Hunter explains, "and certainly the more intellectually sophisticated," he goes on to opine, "are not so explicit about making America Christian but rather speak in tones that are more

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88. See E. CAHILL, *THE FRAMEWORK OF A CHRISTIAN STATE: AN INTRODUCTION TO SOCIAL SCIENCE* (1932); Brian M. McCall, *Consulting the Architect When Problems Arise—The Divine Law*, 9 *GEO. J.L. & PUB. POL'Y* 103, 117–28 (2011).

89. AQUINAS, *supra* note 66, q. 99, art. 2, at 102.

90. SECOND VATICAN ECUMENICAL COUNCIL, *DIGNITATIS HUMANA[E] [DECLARATION ON RELIGIOUS LIBERTY]* ¶ 1 (1965), available at <http://www.columbia.edu/cu/augustine/arch/vc2/dh.txt>. Charles J. Chaput elides the issue of the state's obligations to God this way: "For the framers, the new federal government had no authority in theological matters." CHARLES J. CHAPUT, *RENDER UNTO CAESAR: SERVING THE NATION BY LIVING OUR CATHOLIC BELIEFS IN POLITICAL LIFE* 85 (2008). Francis Cardinal George hews closer to the traditional account:

The Catholic Church . . . has always insisted that civil law is not the highest law. . . . There is divine law . . . . While this position is sometimes resented, the purpose of the civil society is to assist people to perfect themselves by properly promoting their various associations and then leaving them free to be faithful, according to a higher law. Cooperation between Church and state is therefore necessary in the creation of good civil laws.

FRANCIS CARDINAL GEORGE, O.M.I., *GOD IN ACTION: HOW FAITH IN GOD CAN ADDRESS THE CHALLENGES OF THE WORLD* 83 (2011).

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

inclusive and civil religious.”<sup>91</sup> Indeed, most “conservative” Christians, as that term is used in contemporary American discourse, do speak that way, both Catholics and Protestants alike, alas. There are others, though, among Catholics, who are not “conservative” in the already-mentioned sense, but “traditionalist,” a term Hunter uses several times, without ever defining it.<sup>92</sup> Traditional Catholics are not satisfied by the argument that the natural law, as understood by as many consciences as happen to be switched on at any given time, supplies the sufficient moral basis of the state, nor do they accept the principle of separation of Church and state. These traditionalists share John Courtney Murray’s worry—though he was no traditionalist—and Brownson’s conviction that the Catholic Church’s authoritative moral teaching rooted in both the natural and divine laws and implemented by the state, thanks to a proper union between Church and state—that is, a union that respects both the integrity of each institution and the state’s dependence on the Church in matters over which she has jurisdiction—is necessary in order to correct and transform human nature and bring humans to natural and, ultimately, supernatural happiness.<sup>93</sup> The traditionalist need take no position on Hunter’s contention that “[e]ach and every faction in society seeks the patronage of state power as a means of imposing its particular understanding of the good on the whole of society,”<sup>94</sup> but must counter that, first, the Church is no faction and, second, what is at issue is the divine right. Further, the traditionalist will agree with John Howard Yoder that the statement, “Jesus Christ is Lord,” is not a statement about inner piety,<sup>95</sup> but—what Yoder does not say—about the entire social order, for the traditionalist shares none of Neo-Anabaptism’s nor Radical Orthodoxy’s allergy to the state, but instead insists upon subordinating the state’s power to the Church’s spiritual judgment.<sup>96</sup> Earthly order should indeed reflect, *pace* Hunter, a “heavenly order.”<sup>97</sup> The call for it is no “myth,”<sup>98</sup> but a divine command, fulfillment of which is assisted by the Church’s authoritative promulgation of the divine law. Hunter uncritically shares the common assumption or conviction, as the case

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91. HUNTER, *supra* note 1, at 127.

92. *Id.* at 85, 86.

93. Murray worried about the possibility of success of the “political experiment of modernity”:

The key to the whole new political edifice was the freedom of the individual conscience. Here precisely lies the newness of the modern experiment. A great act of trust was made. The trust was that the free individual conscience would effectively mediate the moral imperatives of the transcendental order of justice (whose existence was not doubted in the earlier phases of the modern experiment). Then, through the workings of free political institutions these imperatives would be transmitted to the public power as binding norms upon its action. The only sovereign spiritual authority would be the conscience of the free man. The freedom of the individual conscience, constitutionally guaranteed, would supply the armature of immunity to the sacred order, which now became, by modern definition, precisely the order of the private conscience. And through free political institutions, again constitutionally guaranteed, the moral consensus of the community would be mobilized in favor of justice and freedom in the secular order. This, I take it, has been in essence the political experiment of modernity.

JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 190–91* (2d ed. 2005); *cf.* BRAD S. GREGORY, *THE UNINTENDED REFORMATION: HOW A RELIGIOUS REVOLUTION SECULARIZED SOCIETY* 219 (2012):

The creation of modern, liberal states as the institutional guarantors of individual rights might have avoided the subjectivization of morality if modern moral philosophy had succeeded in its principal objective: to discover or create a convincing secular foundation for ethics and thus for a shared moral community independent of inherited Christian or other religious beliefs. But this did not happen, whether with respect to the good, human priorities, or right and wrong.

94. HUNTER, *supra* note 1, at 106.

95. *Id.* at 156 (quoting JOHN HOWARD YODER, *FOR THE NATIONS: ESSAYS EVANGELICAL AND PUBLIC* 24 (1997)).

96. *See* HUNTER, *supra* note 1, at 161, 219.

97. *See id.* at 64.

98. *See id.* at 112.



may be, that the legitimacy of the state is “from the people,”<sup>99</sup> but, again, we have it on divine authority that “all authority is from God,” and it is for the authority of the Church to tell the state what moral principles should inspire its social activity and its legislation.<sup>100</sup>

It is, I suppose, possible, though I rather doubt it, that the traditionalists are less rather than “more intellectually sophisticated,”<sup>101</sup> but they do seem to enjoy the support of Hunter’s observations and his argument that the current wars of the words rooted in unaided human reason and separation of Church and state are not getting the job done.<sup>102</sup> Social atheism, such as is required by the U.S. Constitution, conduces to individual atheism.

## VII. FROM LAW TO GRACE (AND BACK)

In conclusion, one can agree with Francis Connell, writing in 1948, that “[n]o one can be so optimistic as to believe that the ideal of a Christian state is going to spread throughout the world in the near future, apart from the extraordinary intervention of Divine Providence,”<sup>103</sup> which, naturally enough, it is hard to discern on the horizon. One can further agree with Connell, however, that “that should not prevent Catholics from proclaiming unhesitatingly the absolute necessity of a return to Christ on the part of governments as well as of individuals, if there is to be any lasting peace in the world.”<sup>104</sup> This is a point Pope Benedict XVI never tires of making:

[T]he world, with all its resources is unable to give humanity the light to guide it on its journey. We find this in our day too: the western civilization seems to have lost its bearings and is navigating by sight. Nevertheless the Church, thanks to the Word of God, sees through the fog. She has no technical solutions but keeps her gaze fixed on the destination and offers the light of the Gospel to all people of good will, whatever their nation and culture.<sup>105</sup>

99. *Id.* at 102.

100. Hunter quotes the late Richard John Neuhaus as follows:

The audacious thing, the unprecedented thing, about the American regime is that it deliberately makes itself vulnerable to a higher sovereignty. . . . The people, however, acknowledge a sovereignty higher than the sovereignty of the state. And, in the American constitutional order, the state places upon itself a self-denying ordinance not to interfere with, not to try to direct or guide, not to establish whatever the sovereign people acknowledge as a sovereignty higher than themselves and higher than the state. This new and audacious thing is called the free exercise of religion. No other regime in human history had ever supposed that it could deny itself the right to attempt to control what people believed about things most binding . . . .

*Id.* at 113 (quoting Richard John Neuhaus, *One Nation Under God*, REFLECTIONS, Summer–Fall 1994, at 1–7). The nucleus of Neuhaus’s error here is the thought that the people are sovereign. Both individually and socially they are under divine law and claims of divine right, and when “the state places upon itself a self-denying ordinance,” *id.*, what this amounts to is individuals jointly denying the divine right. The framers had their reasons, we can suppose, but so did Judas.

101. *Id.* at 127.

102. Pope Benedict XVI, Solemnity of the Epiphany of the Lord: Angelus, Saint Peter’s Square (Jan. 6, 2012) [hereinafter Pope Benedict XVI, Angelus], available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/angelus/2012/documents/hf\\_ben-xvi\\_ang\\_20120106\\_epifania\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/angelus/2012/documents/hf_ben-xvi_ang_20120106_epifania_en.html). “The state must recognize that a fundamental system of values based on Christianity is the precondition for its existence.” JOSEPH CARDINAL RATZINGER, CHURCH, ECUMENISM, AND POLITICS: NEW ENDEAVORS IN ECCLESIOLOGY 207 (Michael J. Miller et al. trans., 2008).

103. Francis J. Connell, *Christ the King of Civil Rulers*, 119 AM. ECCLESIASTICAL REV. 244, 252 (1948).

104. *Id.*

105. Pope Benedict XVI, Angelus, *supra* note 102.

[Vol. 39: NNN, 2012]

*Making Nations Happy*

PEPPERDINE LAW REVIEW

Nothing but a lack of popular resolve prevents our Constitution from being amended or—and here one must be more careful than some Catholic authors are<sup>106</sup>—construed in accordance with the principles of the Christocentric political tradition. It is the popular will, not the divine will, that is wanting. To be sure, a population that is not overwhelmingly Catholic would, of course, not view itself as having reason to establish a Catholic state, and, to be perfectly clear, it is the traditional Catholic view that “there is no *subjective* duty on the state’s part to accept and to profess the Catholic religion officially except where the existence of the objective obligation is recognized, in civil societies that may properly be designated as Catholic.”<sup>107</sup> Because that objective obligation is rarely recognized in the United States, the subjective obligation does not currently attach here. But that is no excuse not to work toward conditions in which it would attach. In a superabundance of caution I will add—though the point is not strictly relevant—that:

The Catholic Church is unalterably opposed to the coercion of any man to join any religious group. It includes in its own dogmatic teaching the pronouncement that no man may be forced or compelled to join even the true Church of Jesus Christ. Furthermore it is the manifest and perpetual teaching of the Catholic Church that no man may be persecuted because of his religious beliefs.<sup>108</sup>

It bears repeating: the Catholic Church is unalterably opposed to forcing anyone to join a religion, nor is anyone to be persecuted on account of his religious beliefs.

Nonetheless, Catholics, along with other Christians, believe that the liberty offered by the Gospel is given for all peoples, and for that reason what they must never do is give up hope or fail to work for change that will favor the spread of the Gospel. The freshness of the Hungarian constitution witnesses to why such hope is not irrational. I will finish by quoting the words of Cardinal Pie of Poitiers (1815–1880), speaking at the grotto at Lourdes: “The supernatural is finished,” Cardinal Pie quoted a nineteenth century man as boasting, and continued: “Well, look here, then! The supernatural pours out, overflows, sweats from the sand and from the rock, spurts out from the source, and rolls along on the long folds of the living waves of a river of prayers, of chants and of light.”<sup>109</sup> Mary Ann Glendon believes that we live on “the edge of chaos.”<sup>110</sup> The way back from the edge of chaos begins by allowing the supernatural full scope to correct and transform this fallen creation.

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106. This is because it is a violation of the common good itself for public officials, such as judges, to exercise more authority than they have been designated by the people to exercise. See Brennan, *supra* note 67, at 447–48.

107. Joseph Clifford Fenton, *The Status of a Controversy*, 124 AM. ECCLESIASTICAL REV. 451, 452 (1951). On the difficulties of determining when “the existence of the objective obligation has been recognized,” see *A Statistical Escape from History*, in E.A. GOERNER, PETER AND CAESAR: THE CATHOLIC CHURCH AND POLITICAL AUTHORITY 153, 153–72 (1965).

108. Joseph Clifford Fenton, *The Catholic Church and Freedom of Religion*, 115 AM. ECCLESIASTICAL REV. 286, 297 (1946).

109. John C. Rao, *School Days*, SEATTLE CATHOLIC (Mar. 15, 2005), <http://www.seattlecatholic.com/a050315.html> (quoting 11 HISTOIRE DU CHRISTIANISME 350 (J.M. Mayeur ed., 1995)).

110. MARY ANN GLENDON, TRADITIONS IN TURMOIL, at xii (2006).

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