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Law, Higher Law, and Human Making Theology and the Higher Law

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I. INTRODUCTION

One of the interminable arguments in the Anglo–American legal tradition centers on whether judges find law or make it. At one end of the spectrum, the judge is seen as a demi-god creating law *ex nihilo*; at the other, as an inert, anonymous being—the judicial equivalent of a potted plant.[1] Sometimes the images show up together in the same account, as when it is suggested that judges act like potted plants when there are rules to be applied but "legislate" freely when they fill in the gaps.[2]

Even if the polar accounts seemed plausible on the surface, neither squares very well with the ways in which human beings act generally. *Human* beings, it turns out, are neither demi-gods nor potted plants. We are powerful but not autonomous; we are constrained but not insignificant.[3]

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1. During the Iran–Contra Hearings, Oliver North's lawyer, Brendan Sullivan, famously defended his right to intervene when his client was being questioned by Senator Daniel Inouye. *See Iran–Contra Hearings; Note of Braggadocio Resounds at Hearing*, N.Y. TIMES, July 10, 1987, at A7. In response to Senator Inouye's suggestion that North "object if he wishes to," Sullivan replied "Well, sir, I'm not a potted plant. . . . I'm here as the lawyer. That's my job." *Id.*

2. *Compare* H.L.A. HART, THE CONCEPT OF LAW 135 (2d ed. 1994) ("Here at the margin of rules and in the fields left open by the theory of precedents, the courts perform a rule-producing function."), *with* RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 14–45 (1978) (criticizing the idea that law "runs out" in cases where no clear guidance is given by precedent), *and* HART, *supra*, at 259–63 (reply to Dworkin).

3. For a Christian theological account of what is means to be human, see G.C. BERKOUWER,

In this paper, I will examine what Christian theology has to teach us about the nature of human creative activity and ask whether there might be anything to be learned about "making" human law on the basis of that investigation. I am not contending that "making" is the best metaphor for what human judges do when they decide on matters germane to our legal and political life.[4] Nevertheless, we often speak in terms of judges making law, so the question seems worth asking.[5]

Rather than attempt to survey and synthesize multiple theological accounts of human making, I have chosen to focus on just one—Dorothy Sayers's *The Mind of the Maker*[6]—and this, in part, because Sayers's well-known account is highly suggestive as to the role some form of "higher law" might play in the human activity of judging. As explained in Part II below, Sayers argues that human creative activity has a Trinitarian structure, which she identifies as Idea, Energy, and Power.[7] These three elements correspond roughly to: (i) the whole *Idea* of the work in the mind of the artist, with reference to which the creative activity is carried out (Father); (ii) the creative *Activity* that makes the work incarnate (Son); and (iii) the work's *Power* to influence the human person and the community's public context (Spirit).[8] The foundational analogy that drives Sayers's account of human creativity is the relation between God's creative activity and that of human beings made in his image.[9]

Parts III, IV, and V elaborate, in turn, each of the three elements described above. Part III connects Sayers's account of the creative *Idea*—the as-yet unrealized concept of the whole that regulates human creative

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MAN: THE IMAGE OF GOD (Dirk W. Jellema trans., 1962); see also William S. Brewbaker III, *Theory, Identity, Vocation: Three Models of Christian Legal Scholarship*, 38 SETON HALL L. REV. (forthcoming 2009) (discussing human capacity for knowledge).

4. In fact, I am inclined to agree with Oliver O'Donovan that, on the whole, "judgment" captures legal decision making better than "making" or "creating." *See* Oliver O'DONOVAN, THE WAYS OF JUDGMENT 8–9 (2005). Nevertheless, as O'Donovan observes, legal judgments may involve substantial changes to the public order and thus may rightly be called creative. *Id.* And, even though judgments are "unlike a work of art" in that they "create[] the new only by pronouncing upon the old," neither artistic nor legal creativity "can be *radically* creative in the sense of giving existence to things that had no existence before." *Id.* at 9.

5. One might also compare legislative or judicial action to human acts of "making" outside the fine arts—to crafts as well as arts. The action of the legislator or judge may resemble not only the fiction writer or the poet, but also the carpenter or the architect. Indeed, Thomas Aquinas apparently favors the latter example. *See* ST. THOMAS AQUINAS, SUMMA THEOLOGICA pt. I-II, q. 95, art. 2 (Benzinger Bros. eds., Fathers of the English Dominican Province trans., 1947); *see generally* William S. Brewbaker III, *Thomas Aquinas and the Metaphysics of Law*, 58 ALA. L. REV. 575, 598–99 (2007) [hereinafter Brewbaker, *Metaphysics of Law*] (discussing architectural metaphor in connection with legal variation).

6. DOROTHY SAYERS, THE MIND OF THE MAKER (1956).

7. *Id.* at 47.

8. *Id.*

9. *Id.* at 46–47.

energy—with classical legal theory's account of "The Law"—a transcendent body of overarching legal principles.[10] There is an obvious similarity between the artist's dependence on the Idea in Sayers's account and the judge's dependence on The Law in classical legal theory. Significantly, however, Sayers does not claim transcendental status for the Ideas that govern human artists' creative work; the Idea is the product of the mind of the individual human maker.[11] Sayers's account thus suggests that if something like The Law exists as a regulative construct, it need not necessarily be tightly connected with natural law. The Law might be "higher" without being "natural."

Part IV focuses on Sayers's concept of the *Energy*, or *Activity*, and accordingly draws attention to the medium of law and the craft of legal decision making.[12] Sayers argues that failure to attend to the contours and limitations of artistic media can result in artistic failure.[13] Similar consequences befall attempts to make law that do not respect the form of law and its limitations and that do not take seriously the demands of the legal craft.

Part V concludes by giving attention to Sayers's concept of a work's *Power*—the fact of its encounter with human beings in a public context.[14] This insight helps explain how laws can fail when they run afoul of higher *facts*—when they are unworkable with respect to the conditions they seek to regulate, sit uneasily with other existing laws, or are opposed by public opinion. Reception of the legal work is also critical as to whether the law will be obeyed and, if so, whether that obedience will be experienced as free or coerced.

II. SAYERS'S METHODOLOGY IN THE MIND OF THE MAKER

The Mind of the Maker begins with two fundamental theological facts: (1) God is Creator of heaven and earth, and (2) human beings are created in his image.[15] Sayers follows St. Thomas Aquinas in stressing that such language is, and must be, analogical, yet argues that there is no alternative: "To complain that man measures God by his own experience is a waste of time; man measures everything by his own experience; he has no other

10. *See infra* notes 28–52 and accompanying text.
11. *See* SAYERS, *supra* note 6, at 51.
12. *See infra* notes 53–87 and accompanying text.
13. SAYERS, *supra* note 6, at 71.
14. *See infra* notes 88–112.
15. SAYERS, *supra* note 6, at 33.

yardstick."[16] Language helps us draw connections between experiences.[17] Sayers's project is to examine "[t]he analogical statements of experience" that are "used by the Christian creeds about God the Creator,"[18] to draw upon those statements to illuminate our account of human creativity, and, perhaps more surprisingly, to draw upon our experience with human creativity to illuminate the creeds.

Creator is not the only analogical term Sayers employs. Because God is triune and human beings bear God's image, Sayers presupposes that all human activity has a Trinitarian structure.[19] She presents the Trinitarian structure of human creative activity as follows:

> First, . . . there is the *Creative Idea*, passionless, timeless, beholding the whole work complete at once, the end in the beginning: and this is the image of the Father.
>
> Second, there is the *Creative Energy* [*or Activity*] begotten of that idea, working in time from the beginning to the end, with sweat and passion, being incarnate in the bonds of matter: and this is the image of the Word.
>
> Third, there is the *Creative Power*, the meaning of the work and its response in the lively soul: and this is the image of the indwelling Spirit.
>
> And these three are one, each equally in itself the whole work, whereof none can exist without other: and this is the image of the Trinity.[20]

Having identified the structure of creative work, Sayers elaborates on it using her experience as a fiction writer.[21] She argues that artistic works are in some sense whole ideas existing in the mind of the human maker, much as

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16. *Id.* at 36.

17. *Id.* at 37.

18. *Id.* at 38.

19. Sayers begins by quoting Augustine's account of sight, which Augustine is using to explain the Trinity by analogy to familiar things. *Id.* at 46. Sayers implicitly reverses the analogy: It is not merely happenstance that sight is a threefold matter; rather sight is threefold because God is. *Id.* Augustine says that in the activity of sight, three elements are inseparably present: "the form seen, the act of vision, and the mental attention which correlates the two. These three, though separable in theory, are inseparably present whenever you use your sight. Again, every thought is an inseparable trinity of memory, understanding and will." *Id.* at 46 (quoting ST. AUGUSTINE, ON THE TRINITY bk. 1, ch. 1 (Gareth B. Matthews ed., Stephen McKenna trans., Cambridge Univ. Press 2002)).

20. *Id.* at 47 (emphasis added). Sayers notes that the argument of the book is an expansion of the concluding speech of St. Michael in her play *The Zeal of Thy House*, from which the quotation is taken. *Id.*

21. *Id.* at 54 ("In the metaphors used by the Christian creeds about the mind of the maker, the creative artist can recognize a true relation to his own experience.").

God's unfolding plan for the universe exists in the divine mind.[22] In the Activity[23] of making the work incarnate (realizing it), the Activity "is conscious of referring all its acts to an existing and complete whole."[24] To illustrate, according to Sayers, a writer judges a word or a phrase or an action undertaken by a character in a novel by reference to "a pattern of the entire book," with which the word or phrase or action either does or does not comport.[25] Finally, the Power of the work is seen when it has contact with other minds (or even with the mind of its maker); the work has the ability to produce a response in the reader.[26] The overall success of a creative work depends on the strength (absolute and relative) of the Idea, the Activity, and the Power. Deficiencies in any element, or the failure to keep the three elements in proportion to each other are, for Sayers, important sources of artistic failure.[27]

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22. *Id.* at 48. It should be noted that the relationship is one of analogy rather than complete identity. *See infra* note 37 and accompanying text.

23. Sayers apparently prefers to describe the second aspect of the creation as Activity rather than Energy but had used "Energy" in her initial presentation of these ideas. SAYERS, *supra* note 6, at 47. She describes the Activity as follows:

> It is dynamic—the sum and process of all the activity which brings the book into temporal and spatial existence. "All things are made by it, and without it nothing is made that has been made." To it belongs everything that can be included under the word "passion"—feeling, thought, toil, trouble, difficulty, choice, triumph—all the accidents which attend a manifestation in time. It is the Energy that is the creator in the sense in which the common man understands the word, because it brings about an expression in temporal form of the eternal and immutable Idea. It is, for the writer, what he means by "the writing of the book," and it includes, though it is not confined to, the manifestation of the book in material form. . . . [I]t is something distinct from the Idea itself, though it is the only thing that can make the Idea known to itself or to others, and yet is . . . essentially identical with the Idea—"consubstantial with the Father."

Id. at 49–50.

24. *Id.* at 48 ("In theological terms, the Son does the will of the Father.").

25. *Id.* Mysteriously, she adds that:

> The Idea of the book is a thing-in-itself quite apart from its awareness or its manifestation in Energy, though it still remains true that it cannot be known as a thing-in-itself except as the Energy reveals it. The Idea is thus timeless and without parts or passions, though it is never seen, either by writer or reader, except in terms of time, parts and passion.

Id. at 49.

26. *Id.* at 50.

27. *See id.* ("If you were to ask a writer which is 'the real book'—his Idea of it, his Activity in writing it, or its return to himself in Power, he would be at a loss to tell you, because these things are essentially inseparable.").

III. THE ARTIST, THE IDEA, THE JUDGE, AND "THE LAW"

The most obvious point of contact between Sayers's Trinitarian account of human creativity and the Anglo–American legal tradition is the normative connection Sayers draws between creative activity and an inchoate Idea to which the activity is referred.[28] As Steven Smith has reminded us, much of our legal practice seems to presuppose something like the "transcendental body of law"[29] common lawyers used to call *The Law*. We distinguish between the law and "precedent," speak of judges "getting the law wrong," countenance retroactive decision making, and otherwise act as if something like The Law existed over and above discrete judicial decisions.[30] In the classical view of the common law, the judge's goal was to declare The Law as it applied to the facts of the particular case.[31] Or, translating this idea into Sayerian terminology, the judge "refer[s] all [his] acts to . . . [a] complete whole."[32]

Let us assume for present purposes that Sayers's account of the Trinitarian structure of human making is correct, and consider how it might be extended to judicial making of law. As we have seen, Sayers draws the following analogy: (*A*) *God's creative Activity* is to (*B*) *God's Idea for the creation of the world*[33] as (*a*) *a human author's creative Activity* is to (*b*) *the author's Idea for the book.*[34] Can we extend this same analogy to (α) *judicial decision making (Activity)* and (β) *The Law (Idea)*?[35]

We should start by remembering that when Sayers compares divine making to human making, she is speaking analogically, not univocally, and that her understanding of analogy is heavily indebted to Thomas Aquinas.[36] Human beings may have been created in God's image, but we are not gods; thus, human making bears a resemblance to divine making in at least some respects, but one sort of making is also *unlike* the other.[37] The meanings of

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28. *See supra* note 25.

29. STEVEN D. SMITH, LAW'S QUANDARY 46, 51–52 (2004).

30. *Id.* at 51–62.

31. *Id.* at 61 (recognizing that the classical assumption of the law includes the "convention that 'judges only declare and do not make the law'") (internal citation omitted).

32. SAYERS, *supra* note 6, at 48.

33. St. Thomas refers to this element as the "Eternal Law." *See* AQUINAS, *supra* note 5, at pt. I-II, q. 93, art. 1.

34. SAYERS, *supra* note 6, at 47.

35. The complete analogy is thus (*A*) *God's creative activity* : (*B*) *God's Idea for the creation of the world* :: (*a*) *a human author's creative activity* : (*b*) *the author's Idea for the book* :: (α) *judicial decision making* : (β) *The Law.*

36. Sayers begins Chapter two, which contains her most significant discussion of analogy, with a quotation from Aquinas, and her treatment of the topic is basically Thomistic. *Cf.* AQUINAS, *supra* note 5, at pt. I, q. 13, art. 5; Brewbaker, *Metaphysics of Law*, *supra* note 5, at 607–09 (discussing analogical predication in Aquinas's thought).

37. One obvious difference is that God creates *ex nihilo* and humans do not. *See* SAYERS, *supra*

the word *making* in each instance are not identical, but neither are they wholly unrelated to each other.

Note also that when the analogy is extended from human making of a work of art to human making of law in the judicial process, we have added an additional analogical dimension. Divine "making" differs from human "making" in what we might call a *vertical* analogy, but there is also a *horizontal* analogical relationship between human "making" of a work of fiction and human "making" of law in a judicial decision. The two activities are similar in some respects, but different in others.[38]

One of the criticisms of analogical reasoning of the type Sayers employs is its indeterminacy.[39] If human and divine making are alike in some respects and different in others, how do we know which characteristics of making are shared and which are not? Moreover, given the horizontal dimension of analogical relationships, is it not possible that one sort of human making might resemble divine making in a particular respect that another sort of human making does not?

We can immediately see this difficulty when we start to unpack the relevance of Sayers's account of human creativity for law. One of the important differences between divine creation and the human fiction writer's creation, according to Sayers, is that the Idea for the fiction writer's novel comes from the writer, not from God.[40] Is the same true of the human judge's "making" of law? If so, the implication would be that the Idea guiding judicial activity would be an idea better characterized as human than divine. Or, in the alternative, is it possible that, in the special case of law "making," the human Activity is regulated by a divine Idea of The Law to which, through some mechanism (perhaps reason) human beings have access?

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note 6, at 38.

38. At one point Sayers states that "we conceive of the act of absolute creation [creation *ex nihilo*] as being an act analogous to that of the creative artist." *Id.* at 40. While one may concede that creativity is occasionally useful in judging, it obviously plays a far less important role than it does for the artist. The contrast suggests a significant disanalogy. Aquinas compares the ruler to an architect. *See supra* note 5.

39. For a helpful discussion of the uses and limitations of analogy, see 3 ALISTER MCGRATH, A SCIENTIFIC THEOLOGY: THEORY 104–32 (2003).

40. *See* SAYERS, *supra* note 6, at 47–48 ("[Idea] is here used, not in the philosopher's sense, in which the "Idea" tends to be equated with the 'Word,' but quite simply in the sense intended by the writer when he says: 'I have an idea for a book.'"). The Word to which Sayers refers is apparently what Aquinas calls the eternal Law, the plan by which God made the universe. *See* AQUINAS, *supra* note 5, at pt. I-II, q. 93, art. 1.

Classical natural law theory is sometimes mistakenly thought to affirm something very much like the latter alternative. Put in Sayers's terms, in this caricature (we might call it "vulgar" natural law), a singular cross-cultural Idea guiding human legal activity is specified by God once and for all times and is available more or less in detail to anyone capable of exercising right reason, leaving only the relatively passive judicial Activity of discerning and declaring it—in oracular fashion—in each instance.[41]

It turns out, however, that the classical conception of natural law is much more complex than this caricature. Interestingly, in Aquinas's seminal account, natural law turns out to be law that is neither the divinely-given eternal law, nor merely human law. Instead, it occupies something of a middle ground; Aquinas describes natural law as the "imprint on us of the Divine light," the "rational creature's participation of the eternal law."[42] Part of God's plan for the universe (the "eternal law" in Aquinas's terminology) is to equip *human* beings with the capacity to know truth, including moral truth. Human knowledge falls well short of divine knowledge,[43] but reason is a gift from God, and human knowledge can be true knowledge nonetheless.

The unfolding picture of human lawmaking in the classical natural law tradition is that while God knows justice in all its fullness, it is only the main ideas of justice—the "first principles of natural law"—that are naturally known (more or less) to all human beings and are (more or less) the same for all.[44] This authoritative knowledge of right and wrong does not come in

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41. A few texts lend at least surface support to this vision of natural law. *See, e.g.*, CICERO, *On the Commonwealth, Book 3*, *in* ON THE COMMONWEALTH AND ON THE LAWS 63–73 (James E.G. Zetzel ed., 2002), *reprinted in* Stephen E. Gottleib et al., JURISPRUDENCE CASES AND MATERIALS: AN INTRODUCTION TO THE PHILOSOPHY OF LAW AND ITS APPLICATIONS 73 (2d ed. 2006):

> True law is right reason, consonant with nature, spread through all people. It is constant and eternal . . . . It is wrong to pass laws obviating this law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter . . . . There will not be one law at Rome and another at Athens, one now and another later; but all nations at all times will be bound by this one eternal and unchangeable law, and the god will be the one common master and general (so to speak) of all people: He is the author, expounder, and mover of this law; and the person who does not obey it will be in exile for himself. Insofar as he scorns his nature as a human being, by this very fact he will pay the greatest penalty, even if he escapes all the other things that are generally recognized as punishments.

Id. at 73. Justice Story famously quotes portions of this passage in *Swift v. Tyson*, 41 U.S. 1, 12 (1842), overruled by *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), in arguing that "[t]he law *respecting negotiable instruments* may be truly declared . . . to be *in a great measure*, not the law of a single country only, but of the *commercial world*." *Id.* (emphasis added). The emphasis I have supplied to Justice Story's quotation should suffice to call into question whether *Swift v. Tyson* is intended to constitute an endorsement of "vulgar" natural law.

42. AQUINAS, *supra* note 5, at pt. I-II, q. 91, art. 2.

43. *Id.* at pt. I-II, q. 91, art. 3.

44. *See id.* at pt. I-II, q. 94, art. 4.

sufficient detail to provide all the specifications needed for a real-world legal system. Judges and legislators must therefore make "particular determinations"[45]—filling in the necessary subordinate specifications. Aquinas acknowledges that these details can be culturally specific and, much of the time, matters of moral indifference.[46] Judges are to use their God-given faculty of human reason (including its moral orientation) to make the determinations, but the determinations do not carry the full weight of the main principles of natural law.[47] Most of the questions with which the legal system occupies itself are not directly answered by natural law, but rather fall into the determinations category.[48]

Returning to Sayers's analogy, and more particularly to the question of the possible relationship between The Law and judicial Activity, there seems to be a disconnect between the concept of The Law as used in the Anglo-American tradition and natural law as traditionally understood.[49] The Law has generally been (i) conceived of in propositional terms and (ii) thought to cover decisions that Aquinas puts in the category of "determinations"—questions not directly answered by the natural law. In Aquinas's scheme, the principles of natural law are not specific enough to produce most "determinations."[50] "Determinations" are connected to the natural law not so much by their specific content as by the requirement that the decision maker employ the divine gift of reason in deciding upon them.[51] The Law, if it exists, has been thought to be more specific than natural law.[52]

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45. *See id.* at pt. I–II, q. 91, art. 3; *id.* at pt. I–II, q. 95, art. 2.

46. *See id.* at pt. I–II, q. 95, art. 2; *id.* at pt. I–II, q. 95, art. 4.

47. *See id.* at pt. I–II, q. 95, art. 2 (arguing that while laws derived directly from the first principles of natural law "have some force from the natural law," determinations "have no other force than that of human law").

48. *See id.* at pt. I–II, q. 91, art. 3 ("[I]t is from the precepts of the natural law . . . that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed . . . ."); *id.* (attributing the need for "determinations" to the limits of natural human participation in the divine wisdom).

49. SAYERS, *supra* note 6, at 36–40.

50. *See* AQUINAS, *supra* note 5, at pt. I-II, q. 95, art. 2.

51. *Id.*

52. A possible point of connection between traditional natural law and The Law is Aquinas's idea of *natural law by addition*. Aquinas says at one point that "nothing hinders the natural law from being changed [in its secondary principles]: since many things for the benefit of human life have been added over and above the natural law, both by the Divine law and by human laws." *Id.* at pt. I-II, q. 94, art. 5. *But cf. id.* at pt. I-II, q. 95, art. 2 (determinations "have no other force than that of human law").

If we are to take the idea of The Law seriously, then, we may not want to associate it as much with natural law as with the institutional practices that have worked together in the Anglo–American legal tradition to minimize disagreements about legal particulars and stabilize legal interpretation in areas of decision making that are not specified by general principles of morality. These practices include the doctrine of precedent, appellate review, legislative supremacy, a bench and bar drawn largely from elite and homogeneous cultural elements, common legal education, and no doubt many others. This raises the possibility that, if Sayers's analogy holds, The Law to which judges recur in making decisions could be far more specific than the universal principles of natural law. Instead, The Law might be part universal morality, part cultural tradition, and part stability-generating legal custom.

To summarize, Sayers's model suggests that if law making is like other sorts of creating, we ought not be surprised to find that something like The Law norms juridical activity, just as Ideas help shape other examples of human making. That said, we need not presuppose a strong connection between The Law and divine law or natural law in the classical sense. The common law, understood as the custom(s) of a particular legal tradition, is a more likely candidate. In the Anglo–American inheritance, we might say that The Law could be "higher" than the precedents that embody it (or evidence it) without meriting the status of natural or divine law. Indeed, it would be dangerous and possibly idolatrous to assume that The Law represents a higher moral authority.

IV. THE MAKER AND THE MEDIUM

Sayers next proceeds to explore the Energy (or Activity), which can be understood as the process of realizing the work—of incarnating it—bringing it from mere conception to created reality.[53] In this discussion, Sayers calls attention to both human freedom and its limits.[54]

Sayers's account is at odds with two popular conceptions of human agency. The first has been identified by Charles Taylor as *disengagement*.[55] The key aspect of this condition is "the assumption of an instrumental stance towards [the world and the body]."[56] When we assume a posture of disengagement, "we use the other as an instrument, as the mere means for realizing our will, and not as in some way integral to our being. . . . [W]e do

53. SAYERS, *supra* note 6, at 49.

54. *Id.* at 69.

55. COLIN GUNTON, THE ONE, THE THREE AND THE MANY: GOD, CREATION AND THE CULTURE OF MODERNITY, THE BAMPTON LECTURES 1992, at 13–14 (1993) (quoting CHARLES TAYLOR, SOURCES OF THE SELF 155 (1989)).

56. *Id.* at 13.

not seek in the world for what is true and good and beautiful, but create our truth and values for ourselves."[57] The disengaged person is ill at home in the world, because the world has little importance in its own right, appearing merely as a blank canvas on which he can impose his will.[58]

If disengagement involves a pathological disrespect for the world (one's "environment"), the proposed cure has often been an idolatrous "respect" that is suspicious of human agency.[59] Sayers follows Christian theology in rejecting both extremes. Christian theology has described the human relationship to the rest of the world as *dominion*: "a worshipping and respectful sovereignty, a glad responsibility for the natural order which [the human person] both discern[s] and love[s]."[60] Humans are to *discern* the created order—to recognize that order and the limitations it places on human and other life and to *love* it—to engage with it in respectful gratitude as the handiwork of a good God, but nevertheless to rule over it.

Discernment and love are both present in Sayers's account of the artist's relation to the world. Failure to respect the hard facts of the world's given order, she says, always end in catastrophe: When human actions

> come into collision with the nature of things, and in particular with the fundamental realities of human nature, they will end by producing an impossible situation which . . . will issue in such catastrophes as war, pestilence and famine. Catastrophes thus caused are the execution of universal law upon arbitrary enactments which contravene the facts; they are thus properly called by theologians, judgments of God.[61]

It should therefore come as no surprise that artistic freedom for Sayers consists in the artist's willing submission "to the limitations of [the] . . . medium. The attempt to achieve freedom *from* the medium ends inevitably in loss of freedom *within* the medium, since here as everywhere,

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57. *Id.* at 14.

58. *See* OLIVER O'DONOVAN, RESURRECTION AND MORAL ORDER: AN OUTLINE FOR EVANGELICAL ETHICS 52 (2d ed. 1994) ("[I]f it were true that [humanity] imposed [its] rule upon nature from without, then there would be no limit to it. It would have been from the beginning a crude struggle to stamp an inert and formless nature with the insignia of his will.").

59. *See* GUNTON, *supra* note 55, at 174 ("It is one of the many contradictions of modernity that side by side have developed a view of the person as essentially indistinguishable from, identical in being with, the non-personal universe, and a view of the person as so discontinuous with the matter of the world as to be an alien within it.").

60. O'DONOVAN, *supra* note 4, at 52.

61. SAYERS, *supra* note 6, at 23 (Note that the resulting picture of God is rather impersonal.).

activity falls under the judgment of the law of its own nature."[62] Sayers illustrates this idea with two different sorts of artistic failures—those that stem from attempting to transcend the medium and those that result from indifference to it.[63]

The exemplar of the former failure in Sayers's book is the "literary" drama—which someone has described as "the dramatic hybrid which confuses the library with the stage . . . [or] whose composition suggests the man of letters who regards the theatre as a medium beneath his lofty dignity."[64] Sayers describes the problem with the "literary drama" as a confusion of media. The drama, she says, has been written

> to conform to an alien literary medium. . . . This means that the writer's Energy [Activity] has arrogated to itself a freedom from natural law—it has refused to be bound by the trammels imposed by flesh and blood. The immediate consequence of this freedom is an intolerable sense of restriction, and the verdict of the critic will be that "the language is labored." The truth is that such speech is not "labored" enough—in the sense that it has not been given enough workmanship. . . . The business of the creator is not to escape from his material medium or to bully it, but to serve it; but to serve it he must love it.[65]

In attempting to rise above the medium, the artist has not created something better, but something worse.

Sayers illustrates the second failure—indifference to the medium—by imagining a playwright working on the scene in a Nativity play in which the angel is about to appear to the shepherds.[66] The writer no doubt has a glorious vision of the angel's appearing,[67] but, says Sayers:

> If he is not to suffer bitter disappointment he must see, while writing, *and at the same time as the vision*, the following mundane and material objects:
> A wooden stage . . . .
> A painted sky-cloth . . . .
> A flock of hired or property sheep . . . .
> Three actors or thereabouts, with appropriate wigs and

62. *Id.* at 71.

63. *Id.*

64. GEORGE JEAN NATHAN, THE THEATRE OF THE MOMENT: A JOURNALISTIC COMMENTARY 3 (1970).

65. SAYERS, *supra* note 6, at 71–72.

66. *Id.* at 155–56.

67. *Id.*

> costumes . . . .
> Another actor, of ordinary human stature, and weighing some 168 pounds of solid animal matter, draped in furniture satin, and supporting on his shoulders wings made of wood and paper . . . or gauze. . . .
> A rope to lower this unfortunate mummer . . . .[68]

Dramatic success cannot be realized apart from attention to the concrete details of dramatic production. Moreover, success is not merely a matter of *not ignoring* the flesh-and-blood limitations of the dramatic medium, but of affirmatively embracing them.[69] The alternative is "a kind of artistic Gnosticism," the artistic equivalent of the heresy that it "is beneath the dignity of the son to dwell in a limited material body."[70]

The most obvious legal equivalent of the literary drama is the philosophical judicial opinion—a decision whose author feels the need to justify her conclusion with recourse to high theory, perhaps because her decision sits less easily with ordinary legal sources.[71] A famous example of such an opinion is *Planned Parenthood v. Casey*.[72] Apparently not content to let the opinion rest entirely on the more mundane ground of stare decisis, Justice Kennedy has recourse to a purported right "to define one's own concept of . . . the mystery of human life."[73] While perhaps comprehensible as a statement of radical philosophical subjectivism, the "right" announced

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68. *Id.* at 156.

69. *See id.* at 154–55 for a fuller discussion of this embrace and its frustrations.

70. *Id.* at 158.

71. *See generally* Michael McConnell, *The Importance of Humility in Judicial Review: A Comment on Ronald Dworkin's "Moral Reading" of the Constitution*, 65 FORDHAM L. REV. 1269 (1997).

72. 505 U.S. 833 (1992) (plurality opinion).

73. *Id.* at 851 ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."). An equally problematic passage appears later in the plurality's opinion, which consumes nearly sixty pages of the *United States Reports*:

> Like the character of an individual, the legitimacy of the Court must be earned over time. So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in themselves . . . is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.

Id. at 868.

in *Casey* is at worst philosophically incoherent, and at best, completely extraneous as a statement about law.

One can also find "theological" legal opinions beset by the same general problem. As with its "philosophical" counterpart, the theological opinion buttresses its legal conclusions with authorities and arguments that are jarring because they seem to be legally extraneous—as if the legal principle at stake would become more sound for having been defended at length by recourse to "higher" extra-constitutional or extra-legal sources such as the Bible or the writings of the nation's founders.[74]

The second mistake—indifference or inattention to the legal craft—is a besetting sin of some modern legal commentators, courts, and legislatures as well. It is the manifestation in law of the disengagement—the instrumental stance toward the world—noted earlier.[75] On this view, law is only about "problem-solving," policy, and results. This goal-oriented approach tends to crowd out reflection on the legal craft, reflection about things that must be done if law is to function effectively in a real-world society, and other features of law that real-world judges and legislators ignore at their peril.[76] Saint Thomas Aquinas includes reasonableness, government authorship, orientation to the common good, and promulgation as such criteria, among others.[77] Isidore of Seville adds conformity to local custom, the possibility of conformity to the law, suitability to local conditions, and clarity, among other features.[78] Lon Fuller likewise insists on rules, promulgation, clarity, and possibility of conformity, but adds to the list prospectivity, coherence, stability, and congruence between the rules as announced and as applied.[79]

The contemporary instrumental approach to law easily leads to a loss of these fundamental aspects of legal craft when they come into conflict with policy objectives. Concern over "fraud and abuse" in the Medicare program, for example, has led Congress to enact laws with which it is virtually impossible for U.S. healthcare providers to comply.[80] They must rely, instead, on the prosecutorial discretion of U.S. attorneys or request an

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74. *See, e.g.*, *Ex parte* Snider, 929 So. 2d 447, 463–66 (Ala. 2005) (Parker, J., dissenting) (arguing that the court majority should have considered the merits of the plaintiff's religious liberty claim, which was not raised below, and reproducing lengthy quotations from Thomas Jefferson, Benjamin Franklin, George Washington, James Madison, and the Bible to support the principle that "[t]he right to worship God is an inalienable, God-given right recognized by the Founders of the United States").

75. *See* GUNTON, *supra* note 55, at 13.

76. *Cf.* SAYERS, *supra* note 6, at 169–98 (criticizing modernity's instrumental orientation).

77. AQUINAS, *supra* note 5, at pt. I-II, q. 90.

78. *Id.* at pt. I-II, q. 95, art. 3.

79. LON L. FULLER, THE MORALITY OF LAW 38–39 (rev. ed. 1969).

80. *See generally* James F. Blumstein, *The Fraud and Abuse Statute in an Evolving Health Care Marketplace: Life in the Health Care Speakeasy*, 22 AM. J.L. & MED. 205 (1996).

advisory opinion to know whether proposed conduct is or is not illegal.[81] A desire to achieve "law and order" has likewise pushed American criminal law in an increasingly harsh and expansive direction in the last fifty years, with a corresponding erosion of rule of law values.[82] "Disengaged" lawyers and judges may also tend to be too slow to concede that perfection in law is beyond the reach of mere mortals. Or they may find visible particularity and vestiges of tradition offensive, even when the traditions have been modified to take account of practical concerns as times have changed. Thus, for example, one might compare the Restatement (3d) Property (Servitudes), which is anything but a "Restatement," to 1960s-style urban renewal that razes old buildings and even neighborhoods to permit the construction of a gleaming concrete-and-steel structure (without windows that open).[83] Rationality is achieved—combining formerly fragmented interests, eliminating arcane and "vestigial" requirements, and so forth. The cost, however, is sometimes law that is more or less inorganic to its setting and, for the foreseeable future, unpredictable.[84]

A related point is the loss of a sense of proportion among legal scholars as to what sort of work merits their attention. "Practitioner-oriented" legal scholarship has come to be a recipe for professional failure in the contemporary legal academy. The scholars receiving the greatest amount of attention from their peers now write about law from the perspective of

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81. *See id.* at 219–25 (illustrating this process in an analysis of safe-harbor regulation passed in the late 1980s).

82. *See* David A. Skeel, Jr. & William J. Stuntz, *Christianity and the (Modest) Rule of Law*, 8 U. PA. J. CONST. L. 809, 819–31 (2006).

83. *See* A. Dan Tarlock, *Touch and Concern is Dead, Long Live the Doctrine*, 77 NEB. L. REV. 804, 810 (1998) ("The primary objective of the new Restatement is to eliminate much of the baroque facade of the law of 'servitudes' and replace it with modern, functional doctrines which both unify and simplify the law.").

84. On the other hand, deference to tradition can clearly be taken too far. *See, e.g.*, 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 70 ("And hence it is that our lawyers are with justice so copious in their encomiums on the reason of the common law; that they tell us, that the law is the perfection of reason, that it always intends to conform thereto, and that what is not reason is not law. Not that the particular reason of every rule in the law can at this distance of time be always precisely assigned; but it is sufficient that there be nothing in the rule flatly contradictory to reason, and then the law will presume it to be well founded. And it hath been an antient [sic] observation in the laws of England, that whenever a standing rule of law, of which the reason perhaps could not be remembered or discerned, hath been wantonly broke in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.") (internal footnote omitted). Colin Gunton argues for a stance toward tradition involving a dynamic of gift and reception: "[I]n order to make grateful use of the work of my teachers I must also come to decisions about what I shall take from them, and what reject." GUNTON, *supra* note 55, at 95.

economic and/or quantitative analysis.[85] Other widely noticed topics are constitutional theory and political philosophy. While there is nothing objectionable about investigating law from any of these perspectives, the value placed on large-scale societal impact is worth noting (and should not be surprising if law is understood to be merely a mechanism for social control).

Legal scholarship may also be valued because it offers a transcendent outside (usually "prophetic")[86] perspective on law, even if it does not affect policy. Assisting ordinary lawyers and judges in doing their work is a far less glamorous and inviting occupation.[87] In each case, there may well be a connection between the values of the legal academy and the Gnostic attitude that the mundane, flesh-and-blood realities of ordinary human callings are not worthy of our attention. These attitudes are entirely appropriate for a disengaged demigod, but not, according to Christian doctrine, for a human person.

V. LAW'S RECEPTION

Power, the final element in Sayers's Trinitarian construction of the creative process, calls attention to the fact that a work's creation is not the end of the story.[88] Once a work is finished, it has its own independent existence. It will elicit a response from others, including both the artist and the audience. Implicit in Sayers's formulation, and explicit in the Christian theology on which her proposal is based, is the created work's separateness from its creator and its unique place in the unfolding story of the world.[89]

Once created, a work will exist in relation to the other realities in the world. One implication of this for new law is that a decision, statute, or regulation will be tested by the way it operates (or fails to operate) in the

85. This statement is based on a casual survey of the top ten paper downloads on the Social Sciences Research Network (SSRN) as of February 16, 2008. *See* Social Sciences Research Network Home Page, http://www.ssrn.com/. This measure might well overstate the influence of economic and quantitative analysis because the database is accessible to academics in other disciplines such as economics and business.

86. *Cf.* O'DONOVAN, *supra* note 4, at xv ("It was an evil day for Christian thought when prophecy became the fashionable category for political reflection in place of practical reasonableness.").

87. Ironically, many scholars who focus on influencing policy or waxing prophetic about the contemporary legal system may find that, instead of helping a small but identifiable group of lawyers who work in an area of law better understand their craft, they influence no one. While a handful of scholars in each of the main branches of the law undoubtedly do influence the shape of the law, most law review articles appear not to be read by anybody except law review editors; much less cited by judges, courts, or even other academics.

88. SAYERS, *supra* note 6, at 50.

89. On the Creator–creature distinction and its relevance for law generally, see William S. Brewbaker III, *Found Law, Made Law and Creation: Reconsidering Blackstone's Declaratory Theory*, 22 J.L. & RELIG. 255, 278–80 (2006–2007).

world in which it applies. As noted earlier, Sayers calls a created work's unsuccessful confrontation with reality a *judgment of God*,[90] and, although her book is not mainly about law, she specifically addresses human laws:

> When the laws regulating human society are so formed as to come into collision with the nature of things, and in particular with the fundamental realities of human nature, they will end by producing an impossible situation which, unless the laws are altered, will issue in such catastrophes as war, pestilence and famine. Catastrophes thus caused are the execution of universal law upon arbitrary enactments which contravene the facts; they are thus properly called by theologians, judgments of God.[91]

Such divine judgments are, for Sayers, impersonal occurrences, simple examples of one law confronting another, and the weaker law yielding, as it must, to the stronger.[92]

Perhaps there are examples of bad laws or decisions yielding catastrophes like war, pestilence, and famine—we might think here of *Roe v. Wade*,[93] or *Dred Scott*,[94] or the Jim Crow laws, but failures of ordinary law are usually more humble than that. Sometimes the failures are felt by the public;[95] other times they are felt mainly by the lawyers and judges who must deal with the mess the bad law leaves behind.[96] In such a case, the law may eventually become moribund, or it may continue to be enforced and work its misery on those affected.[97]

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90. *See supra* note 38.

91. SAYERS, *supra* note 6, at 23. Sayers's definition appears to extend not only to civil law, but also to informal rules regulating conduct or sports, for example.

92. *Id.* at 24–25.

93. 410 U.S. 113 (1973).

94. Dred Scott v. Sandford, 60 U.S. 393 (1856).

95. *See* William J. Stuntz, *Self-Defeating Crimes*, 86 VA. L. REV. 1871 (2000) (arguing that criminalizing immoral conduct can undermine social norms disfavoring such conduct).

96. Consider Justice Scalia's comments about the famously unworkable *Lemon* test:

> Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District. . . . Over the years . . . no fewer than five of the currently sitting Justices have, in their own opinions, personally driven pencils through the creature's heart . . . .

Lamb's Chapel v. Ctr. Moriches Free Sch. Dist., 508 U.S. 384, 398 (1993) (Scalia, J., concurring).

97. At other times, the reality the law bumps into is contrary opinion, either that of the public at large or of the elites charged with enforcing the law. In the former case, one might think of the

Not only must newly created law confront the other realities in the world, those other realities must take account of the law. The most obvious example of this is that negative consequences—punishment or civil liability, for example—may occur to those who ignore the law.[98] More significantly for present purposes, however, new laws affect the public landscape. Along these lines, Sayers notes that there is a sense in which the creative imagination operates analogously to the divine creation *ex nihilo*. "The poet is not obliged," she writes, "to destroy the material of a Hamlet in order to create a Falstaff, as a carpenter must destroy a tree-form to create a table-form."[99] So it is with law: While a new law may take an old one out of operation, it does not destroy it. A legal historian—or, for that matter, a lawyer—may study laws that have been repealed in order to understand the context of the "present" law. Indeed, new law may be unintelligible except as a reaction against the old. And, occasionally an old law may even regain its force. What would Alabama's abortion law be, for example, in the event *Roe v. Wade* were overturned?

A new work's independence implies not only its interaction in foreseeable ways, but can also involve the work taking on a "life of its own," or even its subversion by actors with intentions remarkably different from the original maker.[100] Justice White undoubtedly did not intend to contribute to the abortion license when he concurred in *Griswold v. Connecticut*,[101] and one doubts whether many of the signers of the Declaration of Independence intended to provide ammunition for the civil rights movement. Nevertheless, the legal landscape changed remarkably with these interventions and their logic eventually, though perhaps not inevitably, worked its way out into public life.

Sayers also observes that creative works accumulate additional power over time as they pass through the minds of successive individuals, becoming progressively more important parts of the fabric against which discourse occurs. She illustrates this in two ways, proffering first the example of an arms expert who complained about Sayers's choice of dynamite as an explosive in one of her novels rather than one of the newer,

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futility of trying to enforce an ordinance against scalping football tickets in Tuscaloosa, Alabama, or one prohibiting pot-smoking at a Grateful Dead concert, or of the Prohibition debacle. The latter category might include FISA court controversy or the Bush administration's generous use of signing statements to announce its attention to ignore putatively unconstitutional laws.

98. Sayers underscores the negative consequences of ignoring the moral laws in the Old and New Testaments, the natural laws, and God's commandments as put forth in the Bible. *See* SAYERS, *supra* note 6, at 26–27.

99. *Id.* at 40.

100. *See id.* at 105.

101. *See* 381 U.S. 479, 502 (1965) (White, J., concurring) (holding Connecticut statute forbidding use of contraceptives unconstitutional); Roe v. Wade, 410 U.S. 113, 221–23 (1973) (White, J., dissenting) (finding Texas statute denying abortions constitutional when health is not implicated).

more powerful products then available.[102] Her answer to the expert was that "the newer words, though associated with more material power, had fewer associations of literary power," lacking *dynamite*'s association with "the words dynamo, dynamic, dynasty, and so forth, and such literary associations as Hardy's *The Dynasts*."[103] Her second illustration makes a slightly different point by adverting to a few lines from her detective novel, *The Nine Tailors*.[104] Within these few lines, she identifies "a whole string of familiar passages" that were "hovering about in my memory" when she wrote—allusions from the biblical books of Job, Isaiah, and the Psalms, as well as the works of Milton, Keats, Browning, Tennyson, Eliot, and Donne.[105]

This phenomenon is no doubt familiar to lawyers. Blackstone argued that law derived much of its force from its status as ancient legal custom.[106] In the Anglo–American tradition, phrases like "due process of law,"[107] "freedom of speech,"[108] "the right . . . to keep and bear arms,"[109] "equal protection,"[110] and "representative government"[111] carry weight that would not be reproduced by materially equivalent verbal formulations. The same is true of even more mundane legal phrases: consideration, *mens rea*, proximate cause, nuisance, and takings, to name but a few.

In response to Blackstone, Jeremy Bentham famously argued that, while it might be true that certain legal phrases gain rhetorical power over time, this is precisely the reason they must be greeted with suspicion. They were,

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102. Today, a reference to "plastic" explosives might be suggestive not merely of destructive power, but of terrorism and espionage.

103. *Id.* at 117.

104. *Id.* at 118 ("[I]ncredibly aloof, flinging back the light in a dusky shimmer of bright hair and gilded outspread wings, soared the ranked angels, cherubim and seraphim, choir over choir, from corbel and hammer-beam floating, face to face uplifted.").

105. *See id.* at 117–19.

106. *See, e.g.*, 3 BLACKSTONE, *supra* note 84, at 11 (noting that "we often mistake for nature what we find established by long and inveterate custom"); 1 BLACKSTONE, *supra* note 84, at 55 (marital property laws and offense of monopolization not grounded in nature).

107. U.S. CONST. amend. V.

108. U.S. CONST. amend. I.

109. U.S. CONST. amend. II.

110. U.S. CONST. amend. XIV.

111. *See* JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 32–33 (1861) (noting that "[a] representative constitution is a means of bringing the general standard of intelligence and honesty existing in the community, and the individual intellect and virtue of its wisest members, more directly to bear upon the government").

for Bentham, merely the stuff of mystification—reliable obstacles to needed reform.[112]

VI. CONCLUSION

Sayers's account suggests that Bentham and Blackstone might both have been right. There may well be in a society a normative institution that we might well call The Law—the accretion of cultural artifacts that form the context of public action, reflecting a community's values—or at least those of its ruling elites or groups—as well as its rules, its legal traditions, and, in an incomplete way, the general loves and commitments of the community. While one might presume, on the basis of the Christian revelation, that there will always be some connection at some points with moral truth, there is no reason to presume that such a connection exists all the way down, or even very much of the way down, the chain of legal particularities. Yet it would seem to be undeniable that a community's traditions—though they themselves are shifting and changing—exert a remarkable pull in particular and identifiable directions at any given time.

This picture of The Law is significant in two directions. First, it helps explain some of the features of our legal practices that are otherwise puzzling.[113] One can also see the benefits—in terms of legal craft—that one might realize from conceiving the judge's role as declaring The Law: stability, predictability, consonance with existing social norms, and so forth. And one might even assert, along with Lon Fuller, that there is a necessary connection between goodness and coherence so that the goal of realizing The Law in a coherent way, while not sufficient to guarantee a good society, is a plus and not a minus.[114] Second, however, this picture allows us to appreciate this limited goodness of The Law without equating The Law with transcendent moral truth.

This leads to a final insight we might take from Sayers's approach to creativity. If we take seriously the idea that civil laws are human creations, we should not be surprised to find that those laws reveal something about their makers, just as God's creation reveals something about him. Consider Sayers's comments on autobiography:

> Like the creation of an imagined character, but in a much higher degree, [an autobiography] is an infallible self-betrayal. The truth

112. *See* JEREMY BENTHAM, A FRAGMENT ON GOVERNMENT AND AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 4 (Wilfrid Harrison ed., 1967) (describing the "grand and fundamental" defect of Blackstone's *Commentaries* as "the antipathy to reformation").

113. *See supra* text accompanying notes 29–32.

114. *But see* H.L.A. HART, *Lon L. Fuller: The Morality of Law*, *in* ESSAYS IN JURISPRUDENCE AND PHILOSOPHY 349–50 (1983) (questioning the value of an inner "morality of poisoning").

> about the writer's personality will out, in spite of itself; any illusions which he may entertain about himself become fearfully apparent the moment he begins to handle himself as a created character, subject to the nature of his own art. As in every other work of creation, insincerity issues in false art.[115]

A society's laws reveal the society for what it is, either in its unconscious and unconfessed evil, which will ultimately be revealed in what Sayers calls "divine judgment," or in self-covering, where its words do not match its deeds.[116] Because we know on the authority of both experience and revelation that the line between good and evil runs through the heart of each human being and, by extension, each political society, equating The Law of the Medes or the Persians or the Americans or the English with the true, the good and the just will often be idolatrous.[117] But that may turn out to be a very different claim than saying that something like The Law—in all its shifting forms and differing conceptions and debated content—cannot exist. As Sayers observes: "Nobody but a god can pass unscathed through the searching ordeal of incarnation."[118]

115. *See* SAYERS, *supra* note 6, at 92.

116. *Id.* at 93.

117. On these themes, see generally H. Jefferson Powell, *The Earthly Peace of the Liberal Republic*, *in* CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 73–92 (Michael W. McConnell, Robert F. Cochran, Jr. & Angela C. Carmella eds., 2001).

118. SAYERS, *supra* note 6, at 93.