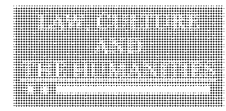
2013

God, Justice and Law: Reflections on Christian Legal Thought Commentary

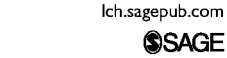
William S. Brewbaker III
University of Alabama - School of Law, wbrewbak@law.ua.edu

Commentary



Law, Culture and the Humanities
9(1) 13–25

DOI: 10.1177/1743872110386526
lch.sagepub.com



God, Justice and Law: Reflections on Christian Legal Thought

William S. Brewbaker III
University of Alabama

Abstract

Rowan Williams once asserted that "all that can be said by the Christian about justice rests on a doctrine of God." This article uses Williams' argument in support of that statement as a vehicle for examining the challenges facing those who would construct explicitly theological accounts of law as well as the potential contributions of theologically informed legal scholarship. An important focus of the article is on theological particularity.

Keywords

Christian legal thought; Christian legal scholarship; Doctrine of God; justice; mercy; punishment; theology; Rowan Williams

> Ultimately, all that can be said by the Christian about justice rests on a doctrine of God, not simply as the God whose truthful love is directed towards us, but as the God whose very life is "justice," in the sense that Father, Son and Holy Spirit reflect back to each other perfectly and fully the reality that each one is, "give glory" to each other.[1]

These words, spoken by then-Bishop Rowan Williams to a gathering of Welsh and English judges and lawyers, rest on the assumption that faith has something to say not only about the virtue of justice, but also about the practice of law.[2] Crudely summarized,

1. Rowan Williams, "Administering Justice: For the Wales and Chester Judges' Circuit" in *Open to Judgement: Sermons and Addresses* (London: Darton, Longman & Todd, 1994), pp. 243–46. Further references to Williams' essay will be made parenthetically within the text, and abbreviated AJ.
2. Although the occasion of the address itself establishes this point, Williams goes on to say explicitly; "Good judgement (good *judgements*) weaves together the drawing of connections

Corresponding author:
William S. Brewbaker III, University of Alabama, School of Law, Tuscaloosa, AL, USA.
Email: wbrewbak@law.ua.edu

Williams' argument goes something like this: (1) Here is what God is like: (a) God is triune: Father, Son and Holy Spirit, in Himself a being in perfect communion "in the sense that Father, Son and Holy Spirit reflect back to each other perfectly and fully the reality that each one is, 'give glory' to each other." (b) God gives human beings His loving attention. (2) When we contemplate this God, "we know ourselves to be the object of a costly and careful attention, searching out the whole of our truth, accepting it and engaging with it; we experience the way that grace opens our eyes to what we'd rather not face in ourselves, gently brings us back to confront our failures honestly, gathers up what's fragmented and forgotten." (3) This contemplation helps us understand what it means to bear God's image and so to do justice to each other – to give to each what is his due, which turns out to be "truth sustained by grace." (AJ, p. 244)

The surprising take-away from Williams' address is that "the vision of God is the cornerstone of justice" (AJ, p. 243): "[a] society that doesn't understand contemplation [of God] won't understand justice because it will have forgotten how to look *selflessly* at what is other" but "will take refuge in generalities, prejudices, self-serving clichés." (AJ, p. 244) Indeed, says Williams, "[t]he administration of justice – as [the last] century frighteningly shows – becomes harder and harder, the more we cease to take it for granted that God is to be honored." (AJ, p. 245)

My aim is neither to quarrel with what is, by my lights, an attractive conception of justice nor to take potshots at the incompleteness of what was, after all, an occasional address.[3] Williams is right that "when we give up the struggle to show to someone else as fully and adequately as possible what their reality is, we become barbarous" and even, more controversially, that "that struggle can only keep going if we are confident that there *is* a depth and a reality to persons because they are the objects of an eternal attention that has in it not selfishness, fiction or illusion." (AJ, p. 244) That said, in addressing a group of lawyers and judges as an Anglican priest, Williams' aim was presumably not merely to present an attractive conception of justice, but to instruct them in the truth – to "really" connect the requirements of justice with the God he and other Christians worship, even though the connection be admittedly drawn by a fallen, fallible (which is to say, human) teacher.

---

and analogies with the recognition of obstinate particularity as it appears here and now; and in this demanding art, it gives, in its own way, to God what belongs to God, by giving God's images the attention they claim, some little reflection of the attention of God." (AJ, p. 246)

3. Although the address is brief, it is characteristic of Williams' thought more generally. Mike Higton argues that "in the two or more million words of his published writings [Williams] is constantly concerned to press one simple question . . . .[:] What difference would it [make] if I believed myself subject to a gaze which saw all my surface accidents and arrangements, all my inner habits and inheritances, all my anxieties and arrogances, all my history – and yet a gaze which nevertheless loved that whole tangled bundle which makes me the self I am, with an utterly free, selfless, love?" Mike Higton, *Difficult Gospel: The Theology of Rowan Williams* (London: SCM Press, 2004), pp. 1–2. The essay bears at least two other characteristic marks of Williams' thought as well – an insistence on responding in openness to others, id. at 19, 112–18, and a refusal to disconnect theological knowledge from worship, id. at 34, 48. For more on Williams' thought generally, see also Rupert Shortt, *Rowan Williams: An Introduction* (London: Darton, Longman & Todd, 2003).

It is not only Williams and, indeed, not only bishops, who are seeking to connect justice with God. Nor is it only Bible-thumping preachers and opportunistic politicians. Increasingly, law professors are doing so, and not just at schools commonly regarded as academic backwaters. One can find recent contributions to Christian legal theory from legal academics at Harvard, Penn and Yale, not to mention Notre Dame and Emory.[4] The aim of this article is to examine Williams' claim to connect God, justice and law in order to exhibit some of the difficulties and some of the promise that attend efforts to connect Christian theology and law more generally.

1. Situating Williams' Doctrine of God

As we have seen, Williams rests his claims about what law should be squarely on his account of who God is and what He is like. Although he does not say so explicitly, Williams assumes that theology is important for ethics because we cannot know what we should do apart from understanding the situation in which we find ourselves.[5] Making good judgments requires knowing not only the consequences that will attend our choices, but also who God is and who we are in relation to Him and to each other.

This assumption raises an obvious challenge to the project of developing theological accounts of law. If good choices depend on a truthful understanding of the world in general (and perhaps even the world to come),[6] religious accounts of law are arguably divisive "conversation stoppers"[7] inaccessible in principle to nonbelieving citizens and therefore inimical to some conceptions of democracy. The argument as to whether theological perspectives are any more particular than other "thick" perspectives that underwrite political discourse,[8] and thus whether such perspectives are appropriate to public discourse in a democracy, is beyond the scope of a short article.[9] I will consider only the

4. See, e.g., David A. Skeel, Jr., "The Unbearable Lightness of Christian Legal Scholarship," *Emory Law Journal* 57 (2008), p. 147; William J. Stuntz, "Christian Legal Theory," *Harvard Law Review* 116 (2003), p. 1707; Michael W. McConnell, Robert F. Cochran, Jr., and Angela C. Carmella, eds., *Christian Perspectives on Legal Thought* (New Haven: Yale University Press, 2001); John Witte, Jr. and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge: Cambridge University Press, 2008).
5. Stanley Hauerwas, "On doctrine and ethics" in Colin Gunton, ed., *The Cambridge Companion to Christian Doctrine* (Cambridge: Cambridge University Press, 1997), p. 33 (characterizing Karl Barth's ethics). I am indebted to Prof. Hauerwas's essay for introducing me to Williams' address.
6. This claim is easily pressed too far. Most Christians would affirm that holding true religious beliefs is not necessary for many, if not most, common moral or legal decisions. See Robert F. Cochran, Jr., "Catholic and Evangelical Supreme Court Justices: A Theological Analysis," *University of St. Thomas Law Journal* 4 (2006), pp. 299–304.
7. Richard Rorty, "Religion as a Conversation-Stopper", in *Philosophy and Social Hope* (New York: Penguin Books, 1999), p. 171.
8. See, e.g., Nicholas Wolterstorff, *Reason Within the Bounds of Religion* (Grand Rapids, MI: Eerdmans, 2nd ed., 1984).
9. For further discussion, see generally Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000); Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002); Michael

ways in which Williams' account of God and justice is contestable even from a perspective *internal* to Christianity, and the consequences of that fact for the development of Christian accounts of law.

The formulations about God that command the most widespread assent among Christians are to be found in the creeds. The Apostles' Creed, for example, identifies God as triune: "God the Father . . . Jesus Christ, His only Son . . . [and] the Holy Spirit." Moreover, God the Father is affirmed to be "almighty" and the "creator of the heavens and earth." Jesus is not merely God's "only Son" but also "our Lord" and the one who in his earthly life was "born of the Virgin Mary; suffered under Pontius Pilate, was crucified, dead and buried" and "was raised from the dead."[10]

There are, however, many additional questions humans have wanted to ask about God, some of which relate to philosophical questions that were being asked long before the birth of Christ. Giving a systematic account of who God is and what He is like that responds to these questions has, not surprisingly, posed a formidable task for Christian theologians over the centuries. Consider, for example, three important debates related to the Christian doctrine of God. The first concerns the relation between God's being and His actions.[11] We may see what God is like as, for example, He leads Israel out of Egypt in the Exodus – that is, we may know Him to some extent in His actions, but theologians, including Williams,[12] have had profound hesitation about saying that we know God "as He really is in Himself."[13]

A second debate concerns the words and concepts we use when we speak about God. Originating, as they do, in our experience of the created world, how can we be sure that they can be predicated meaningfully about God, who is beyond anything with which we are familiar?[14] Three of the most familiar attempts to deal with this problem are the *way of negation*, the *way of eminence* and the *way of causality*.[15] In the first of these approaches, we attribute characteristics to God by beginning with our own experience of creaturely limitation and denying that God is subject to such limitations, enabling us to say what God is not (e.g., limited by space and time), even if we are unable fully to say what He is.[16] In the alternative, we may (following the way of eminence), begin with admirable qualities we observe in creation and say that God possesses these qualities to

J. Perry, *Under God?: Religious Faith and Liberal Democracy* (Cambridge: Cambridge University Press, 2003).

10. "The Apostles Creed" in Alister E. McGrath, ed., *The Christian Theology Reader* (Oxford: Blackwell Publishers Ltd., 1995), p. 8.
11. See Colin E. Gunton, *Act and Being* (London: SCM Press, 2002), pp. 9–12, 21–23.
12. See, e.g., Rowan Williams, "A Ray of Darkness" in *Open to Judgement: Sermons and Addresses* (London: Darton, Longman & Todd, 1994), pp. 118–124.
13. Thomas Aquinas, *Summa Theologiae*, trans. Fathers of the Dominican Province (New York: Benziger Brothers, 1948) Ia.13.2, ad 3; see also Gunton, *Act and Being*, pp. 49–54.
14. For a statement of the problem, see Brian Davies, *An Introduction to the Philosophy of Religion* (Oxford: Oxford University Press, 2nd edition, 1993), pp. 20–31.
15. Gunton, *Act and Being*, p. 12. See also F.D.E. Schleiermacher, *The Christian Faith*, trans. H.R. Mackintosh and J.S. Stewart (New York: Harper & Row, 1962), vol. 1, pp. 197–200; Etienne Gilson, *The Christian Philosophy of Thomas Aquinas*, trans. L.K. Shook (Notre Dame, IN: University of Notre Dame Press, 1994), pp.97–110.
16. See, e.g., Thomas Aquinas, *Summa Contra Gentiles*, trans. Anton C. Pegis (Notre Dame, IN: University of Notre Dame Press, 1975), Bk. 1, ch. 14.

an unlimited degree.[17] Or, finally, because admirable qualities must be generated by a prior higher cause, we may attribute to the higher cause a transcendent version of the quality that is analogous (but not identical) to the observable lower quality.[18]

A third debate concerns whether abstract philosophical concerns have exerted too much influence over Christian doctrines of God. If God has revealed himself in Christ, in history and in the Bible, should not his self-disclosure provide the primary categories of thought, rather than being subservient to the potentially alien categories of (Greek) philosophy?[19]

Even with only this rough sketch of a few of the many controversies surrounding the doctrine of God, we can begin to situate Williams' account of God theologically. It draws both on God's "internal" being and on his actions in history. God is triune – in His inner being, He is Trinity. In His external acts, He is, among other things, One who gives human beings "costly and careful attention." Williams' account falls mostly on the biblical side of the philosophical/biblical divide noted above. The focus is not on the absence of limitations on God's being, nor on the superiority of His perfections compared to ours, nor on the relation higher causes must have to the things they produce. Instead, the focus is on God in three Persons, and the way the Three relate to each other. However optimistic individual Christian theologians may have been over the prospect of natural theology, even the most optimistic have held that human beings could not know of the Trinity apart from divine revelation,[20] much less have reason to believe that the inner life of God consists of "reflect[ing] back to each other perfectly and fully the reality that each one is, 'giv[ing] glory' to each other." Moreover, Williams' account of the mixture of judgment, mercy and truth-telling is, in theological terms, Christological – emphasizing Jesus' incarnation as a revelation of what God is like[21] and his costly sacrifice for human sin.[22]

Even among those employing a more "biblical" than "philosophical" approach to the doctrine of God, however, Williams might still have some explaining to do. If we recur to God's actions in history as presented in Scripture, and especially those related to God's justice, we might conclude that the thought of "know[ing] ourselves to be the object of a costly and careful attention, searching out the whole of our truth" may not always be as welcome a prospect as Williams seems to suggest. To take but one famous example, when the prophet Isaiah is commissioned, he has a vision in which he is in the presence of God seated on a throne surrounded by angels declaring the holiness and glory of God. Isaiah has not, as yet,[23] received any attention from God, but can only

17. See, e.g., Thomas Aquinas, *Summa Theologiae*, Ia.4.2.
18. See ibid., Ia.4.2.
19. Gunton, *Act and Being*, pp. 19–23. The question is finally one of relative emphasis. See Gerald Bray, *The Doctrine of God* (Downers Grove, IL: InterVarsity Press, 1993), pp. 28–35.
20. Thomas Aquinas, *Summa Theologiae*, Ia.32.1.
21. John 1:18 ("No one has ever seen God; the only God, who is at the Father's side, he has made him known."). All Scripture quotations in this article are taken from the English Standard Version.
22. There are also philosophical underpinnings for Williams' convictions about the importance of giving careful attention to the other. See Shortt, *Rowan Williams*, pp. 76–80 (discussing Williams' indebtedness to Hegel).
23. Isaiah, spurred by the vision of God, judges himself. Shortly thereafter, God sends an angel with a burning coal to purify his lips and atone for his guilt. See Isaiah 6:6.

declare: "Woe to me! . . . I am ruined! For I am a man of unclean lips, and I live among a people of unclean lips, and my eyes have seen the King, the LORD Almighty."[24] If Isaiah's experience is any guide, the vision of God that Williams is encouraging the lawyers to pursue seems a good bit more unsettling than Williams lets on.

Isaiah is not the only example. The psalmist describes God as one who "hate[s] all evildoers," one with whom "evil may not dwell," one who "destroy[s] those who speak lies" and "abhors the bloodthirsty and deceitful man."[25] God's "face . . . is against those who do evil, to cut off the memory of them from the earth."[26] This is apparently not merely a matter of words. We see plagues visited on the oppressive Egyptians[27] and the grumbling Israelites,[28] the ground swallowing up the rebellious "sons of Korah,"[29] not to mention the lengthening of Israel's wandering in the wilderness[30] and the commanded slaughter of the Amalekites in retribution for their prior attack on vulnerable Israel.[31] The prophet Nahum pronounces judgment on Nineveh for its violence and materialism[32] in frightening terms: God not only "takes vengeance on his foes and maintains his wrath against his enemies," but his anger is "fierce" and his "wrath is poured out like fire."[33] "The mountains quake before him and the hills melt away;" who, then, "can withstand his indignation?"[34]

Even Jesus refers to God's justice and wrath on more than one occasion, comparing his second coming to Noah's flood,[35] admonishing the disciples not to "fear those who kill the body, and after that have nothing more that they can do," but rather to "fear him who, after he has killed, has authority to cast into hell."[36] He offers a surprising answer to those who told him about Pilate's murder of Galileans who were in the midst of offering sacrifices: "Do you think that these Galileans were worse sinners than all the other Galileans, because they suffered in this way? No, I tell you; but unless you repent, you will all likewise perish."[37] As for those who failed to feed the hungry, attend to the thirsty and the naked and look after the prisoners, Jesus says they will be sentenced to "[d]epart from him . . . into the eternal fire prepared for the devil and his angels."[38] He announces that "whoever rejects the Son will not see life, for God's wrath remains on him."[39] And Jesus himself is angry on at least three occasions[40] – He is explicitly stated to have been angry

24. Isaiah 6:5.
25. Ps 5:4.
26. Ps 34:16.
27. Exodus 7–11.
28. Numbers 21:4–9.
29. Numbers 16.
30. Numbers 14:30–35.
31. 1 Sam. 15:2–3.
32. See Nahum 2:12; 3:16.
33. Nahum 1:2,6.
34. Nahum 1:5,6.
35. Matt. 24:37–38.
36. Luke 12:4–5.
37. Luke 13:2–3.
38. Matt. 25:41.
39. John 3:36.
40. R.V.G. Tasker, *The Biblical Doctrine of the Wrath of God* (London: Tyndale Press, 1951), pp. 30–35.

with the Pharisees who were attempting to use his Sabbath healing of a man with a withered hand against him;[41] he was "indignant" with his disciples for refusing to bring little children to him,[42] and demonstrated his displeasure in the cleansing of the temple.[43]

At this point Williams would surely (and rightly) object that it is misleading to offer an account of God's justice offered in abstraction from other aspects of his character, especially his mercy.[44] Indeed, in many biblical passages, God's mercy and his justice are held alongside each other. Consider, for example, God's famous self-description when he reveals himself to Moses as Moses appears before him with the second set of stone tablets:

> The LORD descended in the cloud and stood with [Moses] there, and proclaimed the name of the LORD. The LORD passed before him and proclaimed, "The LORD, the LORD, a God merciful and gracious, slow to anger, and abounding in steadfast love and faithfulness, keeping steadfast love for thousands, forgiving iniquity and transgression and sin, but who will by no means clear the guilty, visiting the iniquity of the fathers on the children and the children's children, to the third and the fourth generation."[45]

In some of the other passages, too, God's mercy is plainly visible alongside his judgment. After Isaiah's cry of woe mentioned earlier, an angel touches his lips with a hot coal and declares his guilt "taken away" and his "sin atoned for."[46] When the grumbling Israelites repent after the plague of snakes is sent, God instructs Moses to make a bronze snake and put it on a pole. Thereafter, "when anyone was bitten by a snake and looked at the bronze snake, he lived."[47] In many other passages as well, God threatens judgment that will be abated if Israel repents.[48]

Even recognizing that God's justice is not his only characteristic, there is something deeply mysterious about these passages. How can God "forgiv[e] iniquity and transgression and sin" without "clear[ing] the guilty"? To use the language of the New Testament, if "all have sinned and fall short of the glory of God," how can God be both "just and [at the same time] the justifier of the [sinner] who has faith in Jesus"?[49] How could a just God

41. Mark 3:5.
42. Mark 10:13.
43. John 2:13–16. Tasker also suggests other instances of Jesus's anger from the parables and his denunciation of human pride. See Tasker, *Biblical Doctrine of the Wrath of God*, pp. 29–30; 33–35.
44. Indeed, Williams elsewhere addresses this very point:
    All this really comes to one thing: the terrible threat of knowledge without love. Is anything in human relations more frightening than that? And how often has the Christian picture of God concentrated on His *knowledge* in a way that is totally oppressive? . . . And our fear of exposing ourselves to any other – in therapy, in the confessional, or simply in ordinary friendship – has a lot to do with that primitive dread of knowledge without love.
    "Knowledge and Love," in *Open to Judgement*, p. 14.
45. Exodus 34:5–7.
46. Is. 6:6–7.
47. Numbers 21:9.
48. For a survey, see O. Palmer Robertson, *The Christ of the Prophets* (Philipsburg, NJ: P&R Publishing, 2004), pp. 184–87.
49. Romans 3:23, 26.

simply write off the offenses of human beings against himself and against each other? Where, in such an account, is justice for the offended and oppressed? For Christians, the strange[50] answer to this question is found in the cross of Christ, which unites God's justice and his mercy through the sacrifice of the innocent (Judge!) for the guilty.

II. The Problem of Particularity

There are other points of theological particularity one might identify in Williams' brief account of God and its application to the question of justice. Even with these few, albeit important, points of division on the table, however, we can begin to see some of the challenges facing attempts to construct Christian theologies of law. Suppose we conclude that, notwithstanding the prospect of God's wrath shown in the Bible, Williams is, finally, justified in saying that when human beings contemplate God, "we know ourselves to be the object of a costly and careful attention, searching out the whole of our truth, accepting it and engaging with it; we experience the way that grace opens our eyes to what we'd rather not face in ourselves, gently brings us back to confront our failures honestly, gathers up what's fragmented and forgotten." (AJ, p. 244) There is nevertheless an additional step to be made in Williams' account of justice. Williams proposes that God's justice, and the Christian's experience of it, be the model for *human* justice. Can we move so effortlessly from what God is like to what we should do?

Williams accomplishes this move by starting with the classical conception of justice as "giving to each his due," but thereby raises another ground of controversy. In order to make God's actions a model for human action, Williams invokes a constellation of ideas – a classical definition of justice, a doctrine of God, and an assumption that it is appropriate to invoke (either univocally or analogically) the same definition of justice for the interrelationships within the Godhead, for divine–human relationships and for relationships among human beings.[51]

---

50. Emil Brunner invokes Luther's contrast between God's "proper work" of love and grace and God's "strange work" of judgment on sin:
Indeed, the Cross of Jesus Christ itself, as a death of this kind, as a result of the wrath of God, when we look at this aspect of the "slaying" of the Son of God, is a "strange work" of God, while on the other hand, where it attains its end, in the repentance and faith of the sinner, it is in very deed the most characteristic work of the Grace of God.
Emil Brunner, *The Christian Doctrine of God*, trans. Olive Wyon (Philadelphia: The Westminster Press, 1950), p. 169 (internal citations omitted).

51. In doing so, he acknowledges that he is following Augustine who spoke of "'doing justice' to God" by giving God His due (AJ, p. 243), and who held that "the less the soul is occupied with the contemplation of God, the less it is subordinated to God; and the more the desires of the flesh lust against the spirit, the less subordinate is the body to the soul," Augustine, *The City of God against the Pagans*, trans. R.W. Dyson (Cambridge: Cambridge University Press), Bk. xix, ch. 4. For Augustine, "justice is found where the one supreme God rules an obedient City according to His grace, so that it sacrifices to none but Him; and where, in consequence, the soul rules the body in all men who belong to that City and obey God, and the reason faithfully rules the vices in lawful order. In that City, both the individual just man and the community

Theological theories of law will often, and perhaps always, involve similar and potentially contestable constellations of ideas. Which sets of theological doctrines are to be foregrounded and which backgrounded? Suppose we take the constellation of doctrines Williams uses and substitute a doctrine of the human person for the doctrine of God.[52] Christian teaching emphasizes, among other things, that human beings are finite, fallen and made in the image of God.[53] The idea that human beings are God's image-bearers is often invoked as a ground of their inherent dignity and is entirely consonant, in that sense, with Williams' account. Human finitude and fallenness, on the other hand, might well counsel against either the possibility or the desirability of Williams' aspirations for justice. Human beings are presumably not capable of an attention that "search[es] out the whole of our truth," nor is it obvious that we would want sinful human beings engaged in such a potentially totalitarian enterprise.[54]

One can also anticipate the objection that Williams' treatment of the question of justice is more indebted to theological categories than the biblical text itself. Even though, as noted earlier, Williams' account of God is generally on the "biblical" side of our posited biblical/philosophical divide, it is striking that to read a Christian theological essay about the relationship between divine and human justice, even an occasional lecture, that makes mention neither of Paul's classic discussion of human justice in *Romans* 13 nor of other biblical passages more directly connected with civil justice.[55]

Paul's letter to the Romans describes governing authorities as "servant[s] of God, avenger[s] who carr[y] out God's wrath on the wrongdoer."[56] While this passage as a

---

and people of the just live by faith, which works by love: by that love with which a man loves God as God ought to be loved, and his neighbour as himself." Ibid., Bk. xix, ch. 23.

52. For an introduction to the Christian doctrine of humanity, see Kevin Vanhoozer, "Human being, individual and social" in Colin E. Gunton, ed., *The Cambridge Companion to Christian Doctrine* (Cambridge: Cambridge University Press, 1997), pp. 158–88.
53. Ibid., pp. 163–71.
54. Although God can "condemn and redeem at once," see Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids, MI: Eerdmans, 2005), p. 87, we cannot. O'Donovan argues that "[i] dealist political orders have become tyrannous by ignoring this limitation, and pretending to redeem when in fact they are doing no more than condemning. The practice of punishment has never been in more danger of becoming cruel than when it is most confidently believed to regenerate the offender and renew society." Ibid.
55. For a recent survey of Old and New Testament passages dealing with justice, see Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), pp. 65–95, 109–31. Williams' approach may have had less to do with the constraints of a short essay than with an intentional approach to theological ethics. Rather than "deriv[ing] moral decisions straight from the Bible," many theological ethicists use "Scripture [to] norm[] theology, which develops a theological ethic." Craig G. Bartholomew, "Introduction" in Craig Bartholomew, Jonathan Chaplin, Robert Song, Al Wolters, eds., *A Royal Priesthood? The Use of the Bible Ethically and Politically* (Grand Rapids, MI: Zondervan, 2002), p. 13. Bartholomew also surveys several alternative approaches. Ibid., pp. 12–19.
56. Romans 13:5.

whole has been a major battleground for interpreters of the New Testament,[57] bridging the gap between Williams' emphasis on due regard for the offender and Paul's description of civil authorities as avengers of evil would seem to require at least a little explanation. For present purposes, it is enough to add to our catalogue of challenges facing Christian accounts of law the inevitability of recourse to authoritative texts in theological discussion. This raises the familiar challenge of interpretive issues related to both the meanings of the texts themselves and their appropriate application.

Before we proceed to the promise inherent in Williams' account, and by extension in theologically informed scholarship, a final difficulty must be noted. Even if one were to agree in principle with Williams' account of what justice entails, it is not only dramatically underdetermined, but there seems to be little hope that more theologizing could add sufficient detail to it that it might be put into operation in a real-world judicial system.

III. The Promise of Particularity

Our examination of Williams' account of justice not only reveals its contestability even within Christian circles, but also strongly suggests that almost any argument attempting to connect theology with law would be just as particular and therefore contestable as the one Williams offers, again, even from within a Christian perspective. What, then, might be the point of using Christianity as a lens through which to interrogate law?

The preceding discussion suggests that the point cannot be to prescribe the form and substance of human political and legal institutions everywhere or to invest concrete political programs with divine authority. Notwithstanding the rhetorical uses to which "Christian principles" have been put, Christian political thought has not traditionally endorsed a single set of institutions as best everywhere and for all time.[58] The usual view has been that most of the appropriate features of political and legal institutions, and the bulk of the content of the laws, are matters that must be judged in light of prevailing circumstances. What benefit, then, might be gained from Christian reflection on law and justice?

If theology cannot generate unassailable legal concepts and prescribe the form of concrete institutions once and for all, it may nevertheless help us to be critical of the ones we have. For the Christian, common conceptions of retribution and justice may need to be chastened by God's revelation in Christ. Karl Barth, for example, argues that if the Christian fails to allow God's enacted justice to shape her understanding of the justice of God, she runs the risk of creating a god after her own image:

> It is not that we recognise and acknowledge the infinity, justice, wisdom, etc. of God because we already know from other sources what all this means and we apply it to God in an eminent sense, thus fashioning for ourselves an image of God after the patterns of our image in the world, i.e., in the last analysis after our own image. . . . There are not first of all power, goodness, knowledge,

57. See Douglas J. Moo, *The Epistle to the Romans* (Grand Rapids, MI: Eerdmans, 1996), 806–10 (surveying seven different readings of the passage on the question of the duty to submit to governmental authority).

58. See Robert P. Kraynak, *Christian Faith and Modern Democracy* (Notre Dame, IN: University of Notre Dame Press, 2001), pp. 1–3.

> will, etc., in general, and then in particular God also as one of the subjects to whom all these things accrue as a predicate. But everything that God is, and that is in God, is – as the origin of all that is distinct from God and that can be the predicate of other subjects too – first and properly in Him.[59]

So, for Barth, it cannot be that God's mercy and justice are opposed to each other. It must rather be the case that God's justice is merciful and his mercy just. Following Williams' line of thought we might add that our earthly conceptions of justice will likewise suffer to the extent they are not grounded in divine justice. And if God's justice is merciful, and his mercy just, then *justice* worthy of the name must be, in some sense, merciful and *mercy* just.[60] This would seem to call, at a minimum, for a system of human justice that seeks the good of the offender and makes allowances for the human condition – the bondage of the human will to sin – while still naming good as good, and evil as evil. Offenders commit genuine offenses but are always neighbors to be loved.[61]

These insights, however, are not always easily extended into the public realm. Systems of human justice, with good reason, typically present a stark choice between condemnation and exoneration, and thus tend to re-enact the tension between justice and mercy at the heart of Christian theology.[62] There does not seem to be room in our systems of earthly justice for imitating in any direct way God's solution to the problem of human injustice. Our government lacks the divine Legislator who might provide us with perfect earthly laws. It lacks a sinless judge to serve as the sacrificial lamb for the criminal's offenses. Much less can it call upon a Holy Spirit to help the offender "walk in newness of life."[63]

---

59. Karl Barth, Church Dogmatics, trans., T.H.L. Parker, W.B. Johnston, Harold Knight, J.L.M. Haire (Edinburgh: T.&T. Clark, 1957), vol. II-1, pp. 333–34.
60. Barth argues that "the mercy of God lies in His readiness to share in sympathy the distress of another." Ibid., p. 369. This mercy has, in part, the effect of mitigating the full demands of God's wrath against sin: "That God who is provoked to anger is not only angry, but for the sake of that which provokes him sets bounds to His anger and is compassionate, and that this compassion is His and is therefore active, where His wrath slays, to make alive and renew and enlighten – that is the secret and at the same time the simple and manifest reality of His mercy." p. 373. Nevertheless, God's mercy must not be seen as undermining God's "victorious opposition to the resistance set up by the creature to God [i.e., sin]." p. 371. Rather, "the mercy of God, too, expresses this opposition." Barth's point is not simply that God's opposition to sin is merciful in the sense that sin generates bad consequences, including punishment and judgment, but that sin itself (not merely the consequences) is "distress and suffering and misery[:] Arrogance is seen as pitiable folly, the usurpation of freedom as rigorous bondage, evil lust as bitter torment." p. 371. The sight of such misery moves God to action.
61. See Jeffrie G. Murphy, "Christian Love and Criminal Punishment" in Witte and Alexander, eds., *Christianity and Law: An Introduction*, pp. 219–35.
62. But see O'Donovan, *The Ways of Judgment*, p. 87 ("Our judgments form a kind of reverse image of God's judgment in Christ. Where he expounded the discrimination between sin and righteousness concretely in the risen life of the man he accepted, we expound our discrimination concretely only by describing the offenses we reject. We cannot give concrete and effective approval, as we can give concrete and effective condemnation.").
63. Romans 6:4. Cf., O'Donovan, *The Ways of Judgment*, p. 87 ("The human judge may show the Holy Spirit's help in judging, but cannot shed the Holy Spirit abroad on those who are judged. Human judgment cannot assure mankind regeneration and new life.").

The effort to assimilate the tension between justice and mercy in Christian thought has nevertheless manifested itself in a number of lesser ways. Sometimes it has been proposed that reconciling the tension requires choosing one over the other. So, for example, it has been argued (rarely) that in light of God's mercy in Christ, all earthly justice should be suspended,[64] or, on the other hand, that while life in the church requires that the gospel law of forgiveness be followed, earthly life requires political judgments that are "Mosaic and not evangelical."[65] More commonly, Christian thought has carried on earthly justice out of necessity, leaving it in uncomfortable tension with the implications of the radical mercy shown the believer, so that force is restricted to the minimum necessary to achieve the society's protection.[66]

Another response to theology's limited usefulness in generating stand-alone concepts of justice and mercy for use in law and politics has been to allow the Christian story to chasten our expectations about earthly systems of justice. Some Christians have thus made a pointed division between earthly politics and the reign of God, suggesting that we would do well not to get our eschatological horizons confused, lest we create an overly intrusive political order with unattainable aspirations. How much chastening is thought appropriate has varied by time and place,[67] but awareness of human fallenness and limitation has almost always colored Christian political thought, both in the direction of acknowledging the need for state punishment of wrongdoing and also in the direction of acknowledging the limitations human officials face in meting out justice.

One of the most striking features of Williams' account of justice is the degree to which it is shaped by narrative. It emphasizes both God's "inner nature" and his actions in history, but, as already noted, its accent is more biblical than philosophical: The most important characteristic of God "in himself" is the mutual regard of the persons of the Trinity for each other. The most salient feature of the divine/human relationship is the "costly and careful attention" human beings receive from God. As we see God "speak[] the truth in love"[68] to us, we extend similar treatment to others.

Williams' account, then, is not merely, or perhaps even mainly, analytical. While the essay provides an account of justice, the focus is less on clarifying legal concepts than to call the assembled lawyers' and judges' attention to the ways in which they carry out their work. Christian teaching about the universality of sin and the gift of grace and forgiveness are expected to affect not only reigning conceptions of justice, but also its practice. The Christian's own experience of God's justice and mercy in the context of human sin should – though sadly and precisely because of that sin often does not – affect the way she treats those on whom earthly juridical institutions will pass judgment. Although he is writing about forgiveness of enemies rather than civil justice, Miroslav Volf draws

64. See, e.g., Thomas L. Shaffer, "The Radical Reformation and the Jurisprudence of Forgiveness" in McConnell, Cochran and Carmella, *Christian Perspectives on Legal Thought*, pp. 321–39.
65. O'Donovan, *The Ways of Judgment*, p. 84.
66. See Oliver O'Donovan, *The Desire of the Nations* (Cambridge: Cambridge University Press, 1996), p. 260; *Catechism of the Catholic Church* §2267 (1997).
67. See William S. Brewbaker III, "Theory, Identity, Vocation: Three Models of Christian Legal Scholarship," *Seton Hall Law Review* 29 (2009), pp. 44–5.
68. Ephesians 4:15.

on the significance of the Christian's assurance of God's ultimate triumph over injustice to make a similar point:

> Forgiveness flounders because I exclude the enemy from the community of humans even as I exclude myself from the community of sinners. But no one can be in the presence of the God of the crucified Messiah for long without overcoming this double exclusion – without transposing the enemy from the sphere of monstrous inhumanity into the sphere of shared humanity and herself from the sphere of proud innocence into the sphere of common sinfulness. When one knows that the torturer will not eternally triumph over the victim, one is free to rediscover that person's humanity and imitate God's love for him. And when one knows that God's love is greater than all sin, one is free to see oneself in the light of God's justice and so rediscover one's own sinfulness.[69]

Like God's justice, human justice is a matter of the personal, not merely the mechanical.

The Christian jurist, even as he carries out the law, must do so in a spirit of mercy and humility, aware of his own limitations, his accountability to God and the immense worth of those being judged. The stubborn question of how to operationalize these insights still remains, however. For those who are actually involved in administering the justice system, whether in the civil or criminal courts, the sum total of Christian thought may sound like an admonition to administer justice with love and mercy, but not to get carried away with the idea, lest good intentions breed bad consequences. Perhaps, at the end of the day, not much can be said beyond admonitions against assuming a self-righteous posture that divides the world into "good people" and "bad people" and against denying the evils that may have brought the offender before the judge – whether those evils be actions of the accused, those charged with making and enforcing the law, or of the larger community.

Even these small admonitions may be welcome in the context of a political discourse that vacillates, in its attitude toward the accused, between indifference and paternalism, and between adopting either an assumption of the individual's unqualified autonomy or her utter lack of agency. Nevertheless, even on Williams' account, there may be more yet to be said. When Williams claims that "all that can be said by the Christian about justice rests upon a doctrine of God," we need not hear him as saying that all the Christian has to say about justice *may be deduced from* a theological doctrine. As a theologian and pastor, perhaps all that Williams can say from his vantage point must necessarily be so limited. The lawyers and judges to whom he was speaking, however, stand in a different position. They presumably know more about laws and legal institutions and, in some respects, offenders, than Williams does. "Resting" on the same theological foundation, they may, with time and effort, be able to say more.[70]

---

69. Miroslav Volf, Exclusion *and Embrace* (Nashville: Abingdon Press, 1996), p. 124.
70. A particularly salient example of Christian thinking about criminal justice in this respect – drawing on a theologically formed moral orientation while emphasizing the operations of local institutions – is the work of William Stuntz. See e.g., William J. Stuntz, "Unequal Justice," *Harvard Law Review* 121 (2008), pp. 1969–2040; William J. Stuntz, "The Pathological Politics of Criminal Law," *Michigan Law Review* 100 (2001), pp. 505–600. See generally Nicholas Wolterstorff, "Public Theology or Christian Learning?" in Miroslav Volf, ed., *A Passion for God's Reign* (Grand Rapids, MI: Eerdmans, 1998), pp. 65–88.