

ESSAY ROUNDTABLE

THEOLOGICAL HUMILITY IN THE WORLD OF LAW

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“Legal theology” must mean more than theological reflection on legal topics just as “feminist theology” means more than theological reflection on “women’s issues.” This is no simple application procedure, but a dynamic interaction between two fields of play, each with an internal variety of methods, considerations, and arguments. Amidst the varieties of Christian theology, Christian feminist theology has distinct methodological features that reflect experiences of subjugation and political commitments to equality and mutuality. Similarly, Christian legal theology—should it in fact develop—cannot claim to represent all Christian reflection as though Christian theology is monolithic and neutrally applied to a stagnant list of legal topics. Rather, Christian legal theology would reflect a distinctive way of doing theology in light of experiences, commitments, and practices within the “world of law.” Given the variety internal to Christian theology and the world of law, the configurations for Christian legal theology are indeed myriad.

However, this does not mean that all configurations are equally commendable. Theological criteria already emerge in the essays collected here. Michael Welker rejects dogmatic fundamentalism for “critical and self-critical theology;” Richard Hays insists upon theology that is scripturally sound; Timothy Jackson commends forms of public theology that reflect epistemic humility without succumbing to relativism; and Rafael Domingo’s goal for legal theology incorporates a theology of love and grace (“to promote justice in the light of the existence of a loving God”).¹ To these criteria, I add theological humility as a methodological commitment to guide the dynamic interaction between Christian theology and the world of law.

As I have written elsewhere, theological humility includes three features: (1) admission of the limitations of knowledge and partiality of perspective, (2) explicit and deliberate hermeneutics, and (3) transparency about faith commitments and accountability to other sources of knowledge.² I first articulated these practices as guides for Christian participation in public debates and advocacy. I agree with Jackson that Christians should advocate publicly for policies that are consonant with religious commitment, lest faith become devoid of social import and public meaning. There is a social message at the heart of the Christian tradition, and believers cannot embody that message

1 Michael Welker, “What Could Christian Theology Offer to the Disciplines of the Law”; Richard Hays, “Whose World? Which Law?”; Timothy Jackson, “Theology and Law Divorced and Reconciled: Aquinas, Luther, Rawls, and Us”; and Rafael Domingo, “Theology and Jurisprudence: A Good Partnership?” All essays are found in *Journal of Law and Religion* 32, no. 1 (2017) (this issue).

2 Ellen Ott Marshall, *Christians in the Public Square: Faith that Transforms Politics* (Eugene: Wipf & Stock, 2015), 73–105.

without attending to the public policies and social institutions that govern people's lives. However, given the problematic poles of religious authoritarianism and instrumentalism—and every potential problem in between—one must seek and articulate consonance between religious conviction and public policy with exceeding care.

Theological humility helps to avoid these two errors familiar to anyone involved in interdisciplinary scholarship and practice. On the one hand, it prevents religious authoritarianism. Like other forms of authoritarianism, this one demands unquestioned obedience, dismisses all other sources of knowledge, and denies legitimacy to all other positions. Religious authoritarianism is antithetical to democratic discourse, enslaves individual conscience, does violence to contrary religious and philosophical positions, and facilitates violence against people who hold them. Believers pave the way for religious authoritarianism whenever they insist that they alone know the will of God, that their knowledge of God's will is beyond the reach of critical inquiry, that God wills particular public policies over others, and that divine endorsement for that policy trumps any other considerations about it. Religious actors must bring faith into public (pluralistic, interdisciplinary) spaces as one voice among many, one participant in the discussion. When entering the public square, faith must take a seat at the table and relinquish its claim to a podium.

Theological humility also prevents the instrumental use of religion. If religious authoritarianism quashes other sources of knowledge and de-legitimizes other sources of authority, instrumentalism places religious claims in service to them. The ideological commitment or the legal position holds the weight, and theology is invited to provide the divine endorsement. However, rejecting dogmatism does not somehow turn religion to jelly. Quite the contrary. Treating theology as an ongoing interaction between faith and history (rather than a set of encapsulated a-historical truths) involves one in the work of negotiation, with dual commitments to the integrity of a faith tradition and its responsiveness to history unfolding. Theological humility avoids both pitfalls of authoritarianism and instrumentalism.

The first feature of theological humility is admission of the limits of knowledge and partiality of perspective. As in contexts of public debate and advocacy, admitting the limitations of knowledge in the world of law is not a particularly effective strategy. Thus, theological voices that reflect this disposition will not perform the instrumental function well; but they will model theological integrity. In contexts where the rhetoric is marked by unwavering assertions and forceful argument, theological humility resists the impulse to chime in with declarations about God's will. Rather, theological humility recognizes the difference between God's will and a believer's discernment of it and speaks and acts accordingly. One practices theological humility by admitting the subjective role in discernment, by noting our standpoint. Although considered a post-modern argument, this point was given powerful expression by H. Richard Niebuhr in his 1941 text, *The Meaning of Revelation*, in which he insisted that "all knowledge is conditioned by the standpoint of the knower."³ Ever cognizant of the social and temporal self, Niebuhr clarified that this standpoint is not isolated, but influenced by community and by history.

The patterns and models we employ to understand the historical world may have had a heavenly origin, but as we know and use them they are, like ourselves, creatures of history and time; though we direct our thought to eternal and transcendent beings, it is not eternal and transcendent; though we regard the universal, the image of the universal in our mind is not a universal image.⁴

3 H. Richard Niebuhr, *The Meaning of Revelation* (New York: Macmillan, 1941), 5.

4 *Ibid.*, 7.

Every norm and frame that a Christian theologian brings to the world of law is mediated through text, tradition, communities of faith, and experience. Every Christian contribution to the discourses of law must begin with a disclaimer: one's discernment of God's will is not the same thing as God's will; one's description of God is not the same thing as God.

Properly understood, theological humility inspires rigor not relativism. Admitting the role of subjectivity in discernment means that one takes seriously the responsibility to interpret *well*. This second feature of theological humility requires one to be deliberate, explicit, and self-critical about processes of interpretation, including but not limited to scriptural exegesis. It is helpful to thinking about this practice of careful hermeneutics as a conversation in which "that is what I believe" serves as the opening line rather than the closing statement. This feature of theological humility—practicing hermeneutics—sounds like a series of questions: Why do you select this passage as authoritative over another? Why do you interpret that passage as you do? What are the commitments that you bring to the text? How do your understanding of God and your experience in this changing world inform one another?

An example makes this practice and its importance clear. References to the image of God abound in Christian discourses on law and justice. The *imago Dei* is not the only theological doctrine to ground notions of human dignity and declarations of human rights, but it is certainly the primary one. The "image of God" enters into contemporary conversation frequently and authoritatively, a striking contrast to its few scriptural appearances. Aside from the main reference in Genesis 1:26–27, there are two further mentions in Genesis (Genesis 5:1 and 9:6) and two references in the New Testament (1 Corinthians 11:7 and James 3:9). On the opening page of his book, *The Divine Image*, Ian McFarland writes, "Though the phrase is certainly evocative, such a sporadic pattern of use would seem to suggest caution in according it excessive anthropological weight." And yet, since the time of Irenaeus, McFarland continues, theologians have viewed the *imago Dei* "as the key to formulating the Christian doctrine of human being."⁵ We might say the same thing for Christian ethicists and moral theologians making a case for human rights, civil rights, and economic justice.

Clearly, there is a world of hermeneutical action between the scriptural exegesis and the political and judicial application. Theological humility requires that one make the connecting threads transparent, whether they be rooted in the sacred tradition of Roman Catholic social teachings or sparked by righteous indignation at the continued denigration of the trafficked bodies of twelve-year-old girls and boys. A Christian does not simply apply this theological doctrine to the world of law. She or he interacts with the entire history of theological reflection on the meaning of the image of God in historical contexts that instrumentalize and violate bodies. The historical contexts and experiences also shape the believer's understanding of the image of God. Theological humility requires honesty about the dynamic nature of moral reflection and the ongoing interaction between scripture, doctrine, and history.

The *imago Dei* is not only a helpful example of discrepancy between scant scriptural mention and frequent contemporary usage; it also illustrates the ways in which theological doctrines change and develop over time and vary across Christian traditions. Granted, Christians who hold a more dogmatic view of their tradition perceive such plurality and development as highly problematic (even heretical). For those of us who appreciate the historical nature of a lived tradition, however, this plurality is to be expected and calls us to task. As participants in a living tradition, Christians

5 Ian A. McFarland, *The Divine Image: Envisioning the Invisible God* (Minneapolis: Fortress Press, 2005), 1.

must be transparent about faith commitments and also accountable to other sources of knowledge. This dual task is the third feature of theological humility.

Whether to be transparent about faith commitments in pluralistic spaces generates robust debate; and there may well be theologians who would join the project of legal theology in a more objective way, keeping their particular convictions in the closet. In my view, however, it is a matter of procedural fairness to subject all elements of one's position to public scrutiny. If theology enters the world of law in a privileged position, it raises the specter of religious authoritarianism yet again. And, of course, "theology" as some abstract body of knowledge does not enter the world at all. Theologians participate in the world, bringing their particular conceptions and interpretations with them, views that cannot be critically engaged when they remain covert.

Critical engagement requires more than an internal cycle of reflection; it requires accountability to other sources of knowledge. This notion of accountability certainly relates to liberal theology's commitment to reasonableness in religion, but the sites of accountability are much broader and more diverse than a narrow construal of reason as rationality. It is not that theology must pass the test of reason, narrowly construed. But rather, speech about God must converse with the range of sources of knowledge and the breadth of human experience. This is particularly crucial in Christian legal theology where Christian concern drives one to a topic; and Christian convictions shape the normative argument. This is natural and somewhat unavoidable; but it also makes plain the need for transparency and accountability. Christian legal theology must follow the methods of interdisciplinary ethics more so than Christian prophetic speech.

As James M. Gustafson has demonstrated time and time again, one navigates the traffic of interdisciplinary work in any number of ways.⁶ Paralleling the errors named here (authoritarianism and instrumentalism), Gustafson suggests that theologians may choose to either reject the other sources of information or be absorbed and determined by them. In between these extremes, however, is a route that is similar to the idea of accountability being advanced here. Working primarily with engagements between science and theology, Gustafson writes, "A scientific or other nonreligious account *limits but does not determine* the possible religious accounts. . . . The scientific account justifies a fundamental direction of a religious account, but it does not exhaust it. There is a claim for varying degrees of compatibility between the scientific and theological accounts."⁷ Similarly, theological humility calls for varying degrees of compatibility between theology and many different sources of knowledge.

That one source of knowledge is human experience must be underscored here for two reasons. First, the conversation about interdisciplinarity in theology and ethics emphasizes engagements with science, social science, political theory, and philosophy much more readily. And, secondly, the intersection of Christian legal theology is sure to be filled with debates over the regulation of bodies. One way that scholars in this field might practice theological humility is by granting epistemological privilege to those who have experienced the problems they address. Scholarship on deportation should take seriously the experiences of migrants. Proposals for affordable housing should integrate the wisdom of those living on the streets. Arguments about abortion should respect the experiences of women who have had one. Epistemological privilege is not a new concept, but it continues to meet great resistance primarily because of the claims that experience makes to truth. However, concerns about truth need not nullify the insights of experience. One can certainly agree that experience is not self-certifiable and still recognize that it is a valuable source of knowledge to

6 James M. Gustafson, *An Examined Faith: The Grace of Self-Doubt* (Minneapolis: Fortress Press, 2004), 5–6.

7 *Ibid.*, 7.

which theologians must be accountable. Margaret Farley's description of the role of experience in moral discernment is particularly apt: experience serves as "a source for moral insight, a factor in moral judgment, a test of the rightness, goodness, and wisdom of a moral decision."⁸

This exercise in accountability might prompt criticism of or correction to a theory, when, for example, a new perspective reveals that "[w]hat is logic to the birds is death to the fish."⁹ More often, it seems the impact of accountability is that of broadening one's conception. That is, the relationship between other sources of knowledge and theology need not always be characterized in terms of limitation and justification, as Gustafson does above. Indeed, engagement with the world, attention to the experiences of others, and research in other fields of study enriches one's theological understanding. Consider, once again, the *imago Dei*. Left only to theological resources (narrowly construed), this rich doctrine would be rather impoverished. But in the denial and the struggle for justice, the violation and assertion of personhood, the declaration of judgment and pardon, the procedures of punishment and restoration, in these contexts, a person might come to a deeper understanding of what it means to be created in the image of God. Theologians who engage these contexts seriously as part of theological reflection—and not only places for proclamation—will surely come to a deeper understanding of God's presence and activity in the world.

The focus of this piece has been on methodological considerations for legal theology, with an emphasis on three features of a disposition that theologians should adopt in the world of law. The features of theological humility reinforce one another. For example, accountability to other sources of knowledge is clearly connected to admission of limitations of knowledge and partial perspectives. And, transparency about faith commitments clearly connects to the practice of deliberate and self-critical hermeneutics. These features also reflect the reality that a disposition is not something one "has" but something one cultivates over time. The disposition of theological humility avoids the extremes of authoritarianism and instrumentalism by practicing a posture of learning as well as proclamation. So, it provides a way to participate fully in the work of justice without the presumption of self-righteousness. The last point to underscore is that theological humility is not just a scholarly posture to be adopted during research and discussion in the world of law. It is a central posture for theology itself. This form of humility is theological not only because it admits the limitations of human knowledge about the divine. It is also theological because it is rooted in the dual awareness of finitude and freedom, fallibility and forgiveness. This kind of theological awareness make genuine humility possible. Theology offers this form of humility to the world of law, and theologians should practice it there.

8 Margaret Farley, "The Role of Experience in Moral Discernment," in *Christian Ethics: Problems and Prospects*, ed. Lisa Sowle Cahill and James F. Childress (Cleveland: The Pilgrim Press, 1996), 135.

9 Karen Lebacqz, *Justice in an Unjust World: Foundations for a Christian Approach to Justice* (Minneapolis: Fortress Press, 2007), 52.