

LETTER TO THE EDITOR

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Dear Editors:

I am writing to clarify my views in response to Kevin P. Lee's review of my book, *The End of the Law? Law, Theology, and Neuroscience* (Eugene: Cascade Books 2021), published in volume 38, issue 1 (2023), of the *Journal of Law and Religion*. Unfortunately, Lee suggests that I hold views that are the opposite of my argument in *The End of the Law?* and that fundamentally contradict the arc of my work on law and theology.

Contrary to Lee's reading, I do not believe that human beings "are defined by their cultural and social traits," nor do I endorse philosopher Steven Horst's pragmatist notion of "cognitive pluralism." I do, as Lee notes, summarize research in physical and cultural anthropology regarding differences among various hominid and early human species, and I do focus on language and cultural products as a marker of what we might mean by *human*. I do also, as Lee notes, benefit from Horst's excellent work on the philosophy of mind. But I plainly state that "pragmatism breaks down, certainly for a project in *theology* and science" and that "[w]e cannot really avoid the big metaphysical questions, notwithstanding the affinity in some circles today for 'theology without metaphysics'" (145, emphasis in original).

Indeed, the central theme of *The End of the Law* is a return to metaphysics as against pragmatism. This is inherent even in the double entendre of the title: *end* is both the destruction of the law by pragmatism without metaphysics and the properly discerned *telos* of the law in God. Perhaps I failed to make this theme sufficiently clear in this text, which is an admittedly dense reworking of a doctoral thesis in philosophical theology, but I don't think so. Interested readers could also consult my book *Law and Theology: Classic Questions and Contemporary Perspectives* (Minneapolis: Fortress Press 2019) and a recent interview in the *Journal of Christian Legal Thought* for more on why I think pragmatism fails as a legal philosophy.¹

Lee further critiques my reference to Aristotelian hylomorphism as supposedly unsupported and outdated. I note first that my return to Aristotelian hylomorphism demonstrates metaphysical commitments beyond pragmatism that should be impossible to miss. On the merits, Lee seems to think serious debate about these questions was settled fifty or so years ago by Ludwig Wittgenstein, or the logical positivists, or contemporary information science, but the literature belies any such claim. For example, Lee oddly cites against me two theologians who wrote endorsements for my book, David Bentley Hart and John Milbank

¹ Anton Sorkin, "The End of Law? A Conversation with David Opderbeck on Law, Theology & Neuroscience," *Journal of Christian Legal Thought* 12, no. 2 (2022): 56–62.



(who was also one of the examiners of this text in its earlier incarnation as a doctoral thesis). Hart and Milbank, of course, will have their own views of Aristotle and of various neo-Aristotelianisms, but we reside in the same school of philosophical theology that insists on reviving and extending ancient wisdom that has been misread and perverted in modernity.

This school of philosophical theology draws on the robust revival of eudaimonism in thinkers such as Elizabeth Anscombe, Philippa Foot, and Alasdair MacIntyre, the retrieval of Platonic and patristic thought in Cambridge Platonism and the *nouvelle théologie*, the phenomenology of philosophers such as Jean-Luc Marion, and so on. One of my main contributions in *The End of the Law*, I hope, is to connect this stream of philosophical theology with robust neo-Aristotelian movements in virtue epistemology, virtue jurisprudence, and metaphysics in current analytic philosophy.² I may be making a wrong turn, but *pace* Lee, I'm not suggesting anything like naïve Aristotelianism without argument.

Finally, I very much appreciate Lee's references to information theory and the philosophy of time, but I wish he had noticed the obviously Augustinian slant throughout *The End of the Law*. A conversation about how information theory might bear on the metaphysics of the human person and a resulting philosophy of law could be quite interesting, not least in connection with Lee's reference to Augustine's musings about God and time. Indeed, the contingency of time as a feature of creation points us beyond time to the transcendent, where we may glimpse enduring truths that can rescue us from the dreary prison of pragmatism. I would welcome that conversation with anyone who is familiar with the relevant literature and who has carefully read my work.

² For a very brief intellectual history of the aretaic turn in contemporary analytic philosophy, see my article "Artificial Intelligence, Rights, and the Virtues," 60 *Washburn Law Journal* 60, no. 3 (2021): 445–74, at 465–68.