The Transformation of American Law

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INTRODUCTION

"The life of the law," wrote Oliver Wendell Holmes, Jr. in 1881, "has not been logic; it has been experience."[1]

With this simple sentence, Holmes began a legal revolution in America that continues to this day. Prior to the rise of Holmes, American law rested upon God's revelation.

In 1798, Jesse Root, Chief Justice of the Superior Court of Connecticut, wrote that Anglo-American "common law was derived from the law of nature and of revelation – those rules and maxims of immutable truth and justice, which arise from the eternal fitness of things . . .."[2]

Less than one hundred years later, Holmes, soon to be appointed to the Supreme Judicial Court of Massachusetts, countered:

> The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy . . . even the prejudices of judges have had more to do than the syllogism in determining the rules by which men should be governed. (Emphasis added)[3]

Holmes's sources of law diametrically opposed those identified by Root who explained:

> . . . [L]aw is the perfection of reason, arising from the nature of God, of man, and of things . . .. It is universal . . .. It is in itself perfect, clear and certain; it . . . cannot be changed or altered . . . ; it is superior . .. All positive laws are to be construed by it, and wherein they are opposed to it, they are void.[4]

Root's proposition that law was unchanging and unalterable contradicted Holmes who claimed:

> The law embodies the story of a nation's development through many centuries, and cannot be dealt with as if it contained only axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become.[5]

Root insisted that law did not come from men and civi1 society, but from "all the works and ways of God," including the created order, and, most especially, the Holy Scriptures:

> The dignity of . . . [the] original [law], the . . . perpetuity of its precepts, are most clearly made known and delineated in the book of divine revelations; heaven and earth may pass away and all the systems and works of man sink into oblivion, but not one jot or tittle of this law shall ever fall.[6]

Root understood that Biblical law was not limited to "religious" matters. Rather, he knew that Biblical law comprehended all "the rights and duties of man," including property ownership, contract rights and obligations, torts (wrongs to others), crimes (wrongs against the State), and domestic and civil relations. No wonder Root called the Bible "the Magna Charta of all our natural and religious rights and liberties – and the only solid basis of our civil constitution and privileges

. . .."[7]

Holmes would have none of this religious stuff. To him law was "nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court . . .."[8] Law, he continued, must therefore be understood from the perspective of a "bad man" – one who cares nothing about maxims, ethics or reason, but does care about "getting caught."[9]

In sum, Holmes perceived law to be what is practiced by men, disconnected from God. He measured law by its utility, not by it "rightness" or "wrongness." Thus, he argued that it would be ''a gain if every word of moral significance could be banished from law altogether . . .."[10]

Holmes's view that law is a pragmatic instrument, fashioned by men to meet the needs of society dominates law today. God's law has been firmly rejected; judge-made "law" has taken its place. The Genesis account of creation has been thoroughly discredited; a neo-Darwinian conception of human evolutionary progress has become the driving force of legal thought. The Biblical revelation of a God-created world order has been discarded; legal analysis is now shaped by a tightly shut system of naturalistic premises.

GOD'S LAW REJECTED

At the time of America's founding, her legal statesmen received God's law as law. They understood God's rules to be, as Jesse Root put it, "most energetic and coercive, for every one who violates its maxims and precepts are sure of feeling the weight of its sanctions."[11]

This view of God's law followed that of Sir William Blackstone who wrote that "[l]aw, in its most comprehensive sense, signifies a rule of action . . . which is prescribed by some superior, and which the inferior is bound to obey."[12] Blackstone's views, in turn, mirrored the Genesis account of creation in the Holy Scriptures:

> Man, considered as a creature, must necessarily be subject the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependance will inevitably oblige the inferior to take the will of him, on whom he depends, as his rule of conduct.[13]

Blackstone and his contemporaries understood God's law to be a self-sanctioning system of rules. God did not need civil society in order to reward those who obeyed His law or to punish those disobeyed. The consequences of obedience and disobedience were built into the very created order.

This was evident from the beginning, in the account of the garden where Adam and Eve were rewarded for their obedience and punished for their disobedience without aid of any civil ruler.[14] And so it has been "outside the garden," from the time of the first recorded murder in Genesis 4 to date.[15]

While this system of rewards and punishments may not be apparent to most people today – even to professing Christians, it was self-evident to all Americans in the founding era. What made it self-

evident was their knowledge of God. In the words, of Blackstone, they knew that

> . . . the creator . . . infinite [in] power . . . [and in] wisdom . . . has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept . .. [And] the creator . . . in his infinite goodness . . . has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and if the former be punctually obeyed, it cannot but induce the latter.[16]

This view of the effectual reign of God's law continued to be held and espoused well into the nineteenth century. For example, John Austin in his 1832 treatise on jurisprudence reiterated that God's rules were binding and enforced for "God is emphatically the superior of Man. For his power affecting us with pain, and of forcing us to comply with his will, is unbounded and resistless."[17]

Three years before Austin wrote his treatise, Justice Joseph Story of the United States Supreme Court delivered his inaugural oration as Dane Professor of Law in Harvard University, reminding his listeners that "[t]here never has been a period, in which the Common Law did not recognise Christianity as lying at its foundations."[18]

In 1842, Justice Story put into practice what he preached. In his famous opinion in *Swift v. Tyson*[19] he ruled that "law" and a court opinion are not one and the same, but that law is the "true" and "just" rule furnished by universal principles binding on all men everywhere. Such was Blackstone's understanding when he wrotethat "no human laws are of any validity, if contrary to [God's law] and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original."[20]

In 1857, Theodore Sedgwick, an eminent New York lawyer and a Jeffersonian Democrat, repeated with approval Blackstone's definition of law and restated the Blackstonian proposition that all men are bound by the law of God:

> Man, in whatever situation he may be placed, finds himself under the control of rules of action emanating from an authority to which he is compelled to bow, – in other words, of LAW. The moment he comes into existence, he is the subject of the will of God, as declared in what we term the laws of nature.[21]

From this foundational proposition, Sedgwick proceeded to itemize other laws governing the affairs of men, including the moral law, the municipal or civil law, and the laws of nations. He then offered this summary to his reader:

> These codes are variously enforced, but each has its peculiar sanction. They are curiously interwoven together and in their combination tend to produce that progress and improvement of the race which we believe Christianity teaches . . .. Thus, the law of nature (the will of God), the moral law, the municipal law, and the law of nations, form a system of restraints before which the most consummate genius, the most vehement will, the angriest passions, and the fiercest desires, are compelled to bend, and the pressure of

> which the individual is forced to acknowledge his incapacity to resist.[22]

Even as late as 1884, Thomas Cooley, Jay Professor of Law at the University of Michigan and a noted constitutional scholar, wrote in his introduction to a new edition of Blackstone's Commentaries:

> Even when convened to consider what shall be the terms of their government the people are not without law . . .. The law of God precedes their action; the immutable principles of right and justice are over and about them, and cannot rightfully be ignored . . ..[23]

Placed against this nineteenth century backdrop, Holmes's statements divorcing law from morality, and limiting law to nothing more than "[t]he prophecies of what courts will do in fact," are startling.[24] But Holmes was not alone. Nor did he pioneer the abrupt departure from America's founding legal heritage.

JUDICIAL OPINIONS SUBSTITUTED

Prior to Holmes's1881 book on the common law and his 1897 lecture on the nature of law generally, Christopher Columbus Langdell promoted the same views as Dean of the Harvard Law School. Langdell assumed that post in 1870. In1871, he published his teaching materials on contracts. In the preface to that book, entitled *Cases on Contracts*, Langdell laid out his philosophy of law:

> Law . . . consists of certain principles and doctrines . . .. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced . . . through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied.[25]

Implicit in Langdell 's concept of law is that law is made by judges. What had been implicit in Langdell's new case method of teaching law, Holmes made explicit in his writings and lectures on law. What Holmes began, his Harvard colleague, John Chipman Gray finished in his 1909 Carpentier Lectures at Columbia University. Published under the title, *Nature and Sources of Law*, Gray debunked all sources of law except one, judges:

> . . . [T]he law is made up of rules for decision which courts lay down; that all such rules are Law; that rules for conduct which courts do not apply are not Law; that the fact that the courts apply rules is what makes them Law; that there is no mysterious entity "The Law" apart from these rules; and that the judges are rather the creators than the discoverers of the Law.[26]

As Gray trumpeted his view of law in the legal academy, Holmes continued his crusade from the bench, now the United States Supreme Court to which he had been appointed in 1902. In 1910, he dissented from Justice John Marshall Harlan's opinion that the federal courts were free to decide a state's common law independently from state court opinions. Holmes responded:

> The law of a state does not become something outside of the state court, and independent of it, by being called the common law. Whatever it is called, it is the law as declared by state judges, and nothing else.[27]

Seven years later, again in dissent, Holmes coined a phrase that became a favorite of his followers:

> The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi sovereign that can be identified . . ..[28]

Holmes's persistent dissents bore fruit twenty years later in *Erie R. Co. v. Tompkins*[29] which overruled Justice Story's ruling in *Swift v. Tyson* discussed above. Ardent Holmes disciple, Justice Felix Frankfurter, explained the significance of the Court's reversal:

> In overruling *Swift v. Tyson* . . ., *Erie R. Co. v. Tompkins* . . . did not merely overrule a venerable case. It overruled a particular way of looking at law which dominated the judicial process long after its inadequacies had been laid bare . . .. Law was conceived as a "brooding omnipresence" of Reason, of which decisions were merely evidence and not themselves the controlling formulations.[30]

What is remarkable about Frankfurter's statement is that he transposed Holmes's revision of Story's understanding of law as if it were Story's. This kind of misrepresentation of America's founding legal philosophy has become commonplace. Modernists simply cannot conceive that men like John Marshall, for example, really believed that law had been revealed by God and that judges discovered that law rather than made it up.[31] Thus it is that man has become his own standard, with court opinion weighed against court opinion to determine the law, without the transcendent legal compass of Biblical law.

Even modern conservative jurists,like Chief Justice William Rehnquist, have adopted the Holmesian premise that there is no law apart from courts and their opinions. As Hadley Arkes has written, Mr. Rehnquist has come to the conclusion that judgments of right and wrong are "simply products of personal belief" and have no authoritative or binding effect on others "until they are in some way given the sanction of law."[32]

If that is all that law is, then it has become no more and no less than the will of judges. For it is they, and they alone, who are empowered to foist their personal values and policy preferences on the rest of society in the name of law. This did not come about by accident, but was well planned and executed beginning in the early twentieth century with a new generation of Harvard-trained lawyers engineering the *coup de grace*.

PROGRESSIVE EVOLUTION PROMOTED

In the July 1978 issue of the American Bar Association Journal, American historian Henry Steele Commager, after a careful review of the development of law over the first two hundred years of the nation's history, concluded that 20th century lawyers and judges had "substituted the operations of the law of evolution for the laws of God." This substitution began with Langdell at Harvard and

continues today, permeating almost every law school classroom, law office, and courtroom in America.

Harvard President Charles William Eliot deliberately chose Langdell to head its law school in order to bring the new science of Darwin to bear on the study of law. Langdell wasted no time, introducing his new case method based upon the philosophy that law was a product of growth over time, sloughing off the old and adding the new to meet the needs of changing times.[33]

Langdell 's new philosophy created serious problems even for Langdell. How did one know when to discard an old rule for a new one and at the same time retain the stability and certainty of law? Langdell vacillated not knowing what to do.[34]

Langdell 's problem had not existed before because of the unchanging and eternal standard of God's Law by which one determined whether a rule of a case, or a statute passed by a legislature, was law.[35] But this did not cause him or his disciples to question their decision to reject divine law. Rather, they simply moved away from the Godly faith of America's founders to a new faith in man-made evolutionary progress.

This new way began to take hold in a number of Holmes's and Gray's followers, chiefly Louis D. Brandeis and Felix Frankfurter. In 1922, Brandeis "expressed his strong conviction" that the United States Constitution "is a living organism . . . capable of growth – of expansion and adaptation to new conditions." Frankfurter, too, saw law, especially constitutional law, as "a vital agency for human betterment."[36]

Who but the judges would be the agents of this progressive change? And where would the ideas come from? Justice Frankfurter wrote in 1934 that they would not come from "reading the constitution but from reading life":

> [T]he process of constitutional interpretation compels the translation of policy into judgment, and the controlling conceptions of the justices are their "idealized political picture" of the existing social order.[37]

Twenty years later Frankfurter wrote that the "judge . . . had to be historian, philosopher, and prophet" so that he might "pierce the curtain of the future . . . [and] give shape and visage to the mysteries still in the womb of time."[38] While Frankfurter restrained himself from exercising this power to the fullest as an associate justice of the Supreme Court, his colleagues on the Warren Court pounced upon this open-ended opportunity to make new law in the name of the constitution.[39]

This god of change dominates the opinions of judges nowadays. From decisions outlawing sex discrimination to rulings limiting capital punishment, old laws are put to death on the sacrificial altar of evolutionary progress. Indeed, the very language of the law has been transformed to reflect the ideal of change. Sex distinctions are dismissed as "old", "archaic" or "fixed notions,'' as if the talismanic labels themselves are sufficient analysis.[40] The death penalty and various methods of capital punishment are measured by "the trend of enlightened opinion", "contemporary human knowledge", and "the evolving standards of decency that mark the progress of a maturing society."[41]

Frankfurter's view of law and judges is not confined to the constitution, nor to judges. Rather, it has become the "ordinary religion of the law school classroom" where law students are taught that "man, by the application of his reason and the use of the democratic processes, can make the world a better place":

> Th[is] . . . approach to law and lawyering releases lawyers from the confines of outmoded conceptions and allows them to pursue social justice more openly.[42]

Under this view of law and the role of lawyers, change has become an end itself, the greatest good that a society can pursue. And in the words of Michigan Law Professor, L. Hart Wright, "Legally inspired change . . . is and will continue to be an evolutionary process which will continue to change our lives in an evolutionary manner."[43]

Wright's view is not atypical, but is shared by the overwhelming majority of his colleagues, as reflected in law school catalogs which almost universally extol the progressive ideal. In addition, the American Bar Association accrediting authorities insist that law schools conform to a relativistic orthodoxy in order to meet the standards of the legal profession. Any law school committed to a curriculum, the foundation for which is Bible, meets stiff opposition in the accreditation process from law professors, judges and lawyers who are absolutely opposed to any teaching based upon the revelation of God.[44]

Having scrapped the Bible, the legal profession has adopted a whole new set of presuppositions diametrically opposed to those of America's founders. As Professor Philip Johnson has written, law is now thoroughly saturated by anew metaphysics, that of scientific naturalism.[45]

NATURALISM EMBRACED

Today, judges insist upon hearing "secular" arguments in their courtrooms. Generally, they do not recognize any basis for other than that which can be empirically proved. Thus, claims based upon morality or religion are summarily dismissed as improper, and in the case of religion, illegitimate.

For example, Justice Harry Blackmun in *Roe v. Wade*[46] reduced the questions of liberty and life to the physically observable. He defined liberty in terms of the physical and psychological impact upon a woman who was compelled by law to bear a child that she did not want. Indeed, Justice Blackmun considered the question of whether a child was wanted or unwanted to be determined by sociological factors, as if God has nothing to with the conception of a human life.[47]

As for life, Blackmun preferred a "scientific" definition over one based on "faith." Thus, he concluded that conception was not an event, but a "process over time." Having reduced life to the physiological, Blackmun invented the concept of "potential life" and, thereby, created a new category into which he placed an unborn child. In this manner, he denied to the pre-born any meaningful civil protection from the threat to their lives posed by mothers and physicians who wanted to kill them.[48]

Had Blackmun paid attention to the Biblical foundation of life, as had America's founders in the

Declaration of Independence, he would have defined life in the terms laid down by the Bible. For the Declaration has defined the inalienable right to life in terms of the relationship that every human being has with God as Creator.[49] Blackmun's naturalistic metaphysic, however, drove him inexorably away from God's revelation to the latest "embryological data." As the writer of Ecclesiastes warned, he missed the knowledge available to him:

> As thou knowest not what is the way of the spirit, nor how the bones do grow in the womb of her that is with child: even so thou knowest not the works of God who maketh all.[50]

But Blackmun's vanity did not end with his abortion decision. In *Bowers v. Hardwick*[51], he, in dissent, upbraided Georgia's authorities for their defense of the state's law prohibiting sodomy:

> The assertion that "traditional Judea-Christian values proscribe" the conduct involved . . . cannot provide adequate justification for Section 16-6-2 . . .. The legitimacy of secular legislation depends instead on whether the State can advance some justification for its law beyond its conformity to religious doctrine . . .. Thus, far from buttressing his case petitioner's invocation of Leviticus, Romans, St. Thomas Aquinas undermines his suggestion that Section 16-6-2 represents a legitimate use of secular power.[52]

Blackmun dismissed Georgia's reliance upon the Scriptures as "religious intolerance" which he likened to "racial animus," and therefore, to mere prejudice. Again, his naturalistic metaphysic precluded any consideration of Biblical law which Blackmun dismissed as "revolting . . . in light of the values that underlie the constitutional right of privacy."[53]

Blackmun insisted that the Georgia authorities prove to his satisfaction that sodomy committed by two consenting adults in the privacy of their own home causes some empirically measurable injury to the community at large.[54] In doing so, Blackmun echoed opinions voiced over thirty years before in England and in America calling for the repeal of all criminal statutes prohibiting such sexual activity.

In 1954, the Wolfenden Committee recommended by a vote of twelve to one "that homosexual practices between consenting adults in private should no longer be a crime . . .." In 1955, the American Law Institute "published with its draft Model Penal Code a recommendation that all consensual relations between adults in private should be excluded from the criminal law." In the latter case, the Institute claimed that "no harm to the secular interests of the community is involved in atypical sex practice in private between consenting adult partners."[55]

On the basis of these two reports, a sizeable majority of the states "reformed" their criminal codes by abolishing all sexual offenses except those involving force, minors and public activity. They did so based upon the premise that private, consensual sexual activity between adults harms no one, not even the actors.

What has happened since then has disproved the naturalistic presuppositions upon which the reform was based. But this has not deterred the so-called "sexual liberation" movement. To the contrary, the outbreak of AIDS, for example, has actually benefitted the movement. At first blush, this

appears to contradict the naturalistic world view of the original proponents of repeal. To the contrary, the concerns expressed about sodomy remain wholly physical, namely, the threat to the health of participants and to the general public. And the solutions proposed are themselves confined to the currently empirically measurable consequences of unbridled promiscuity. Instead of reexamining the "rightness" or "wrongness" of "the homosexual lifestyle," the civil government is driven in its search to find preventive vaccines and cures for those threatened or stricken with the AIDS virus.

Attempts to push the concerns beyond venereal disease to a general threat to the nation's survival based upon history or upon the Biblical account of Sodom and Gomorrah are rebuffed. Such arguments have no place in a world where "the limitations of science are taken to be limitations upon reality."[56]

CONCLUSION

In Matthew 16:1-3, Jesus warned the Pharisees and the Sadducees not to limit their understanding of the world to that which was physically observable and measurable. Yet, for the past one hundred years that is precisely what America's lawyers have done. As was true of the Pharisees and the Sadducees who missed the "signs of the times," so today' s lawyers are missing the warnings of God to those who ignore His law:

> And turning the cities of Sodom and Gomorrah into ashes condemned them with an overthrow, making them an ensample unto those that after should live ungodly.[57]

In Luke 11:52 Jesus pronounced "Woe unto you lawyers! for ye have taken away the key of knowledge; ye entered not in yourselves, and them that were entering ye hindered." Lawyers stand at the gateway of civil society. It is they who decide if the civil realm will conform to the laws of God. If they reject God's revelation as the source of law, then they are a curse, rather than a blessing. The stakes are too high to leave law only to the lawyers.

END NOTES

1. O. W. Holmes, The Common Law 1 (1881).

2. J. Root, "Government and Laws in Connecticut," reprinted in The Legal Mind In America 33 (P. Miller, ed. Cornell: 1962).

3. Holmes, *supra* note 1, at 1.

4. Root, *supra* note 2, at 34-35.

5. Holmes, *supra* note 1, at 1.

6. Root, *supra* note 2, at 35.

7. *Id.* at 35-36.

8. Holmes, "The Path of the Law," reprinted in Holmes, Collected Legal Papers 169 (1922).

9. *Id.* at 172-73.

10. *Id.* at 179.

11. Root, *supra* note 2, at 35.

12. I W. Blackstone, Commentaries On The Laws Of England 38 (U. Chicago reprint: 1765).

13. *Id.* at 39.

14. Genesis 3.

15. Psalm 2.

16. I Blackstone, *supra* note 12, at 40.

17. J. Austin, The Province of Jurisprudence Determined (1832) reprinted in Cohen and Cohen's Readings in Jurisprudence and Legal Philosophy 22 (Little Brown: 1979).

18. J. Story, "Discourse Pronounced Upon the Inauguration of the Author as Dane Professor of Law in Harvard University" (Aug. 25, 1829) reprinted in The Legal Mind in America 178 (Cornell: 1962).

19. 16 Pet. (U.S.) 1, 18-19 (1842).

20. I Blackstone, *supra* note 12, at 41.

21. T. Sedgwick, "A Treatise on the Rules Which Govern the Interpretation and Application of Statutory and Constitutional Law" (New York: 1875) reprinted in The Legal Mind in America 298 (Cornell: 1962).

22. *Id.*

23. I Blackstone, Commentaries on the Laws of England ix (Cooley ed. 1884).

24. Holmes, "The Path of the Law," *supra* note 8, at 173.

25. C. Langdell, Cases on Contracts (1871). An account of the role of Langdell as dean and the complete preface to his casebook may be found in Titus, "God, Evolution, Legal Education, and Law," Journal of Christian Jurisprudence 11 (1986).

26. J.C. Gray, Nature and Sources of Law Sec. 266 (Columbia U.: 1909).

27. *Kuhn v. Fairmont Coal Co.*, 215 U.S. 349, 372 (1910).

28. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 222 (1917).

29. 304 U.S. 64 (1937).

30. *Guaranty Trust Co. v. York*, 326 U.S. 99, 101-02 (1945).

31. See Titus1"Moses, Blackstone and the Law of the Land," Christian Legal Society Quarterly 5 (Fall 1980).

32. H. Arkes, Beyond the Constitution 15- 6 (Princeton: 1990).

33. Titus, "God, Evolution, Legal Education and Law," *supra* note 25, at 11-23.

34. *Id.* at 26-28.

35. See R. Pound, Introduction to the Philosophy of Law 3 (Yale: 1922).

36. A. Bickel, The Supreme Court and the Idea of Progress 18-20 (Harper: 1970). The tandem of Brandeis and Frankfurter operated off, as well as on the Court, to get their views of public policy enacted into law. See B. Murphy, The Brandeis/Frankfurter Connection (Oxford: 1982).

37. *Id.* at 24.

38. *Id.* at 38.

30. *Id.* at 45-181.

40. *Stanton v. Stanton*, 421 U.S. 7, 14-15 (1975); *Heckler v. Mathews*, 465 U.S. 728, 744-45 (1984).

41. *Glass v. Louisiana*, 471 U.S.1080 (1985) (Brennan, J. dissenting).

42. R. Crampton, "The Ordinary Religion of the Law School Classroom," The NCIM Journal 72, 73, 77 (Summer 1977).

43. Quoted from 22 *Law Quadrangle Notes* 11-13 (Spring 1978) in Titus, "God, Evolution, Legal Education and Law," *supra* note 29, at 29.

44. This is based upon the personal testimony of the author who has experienced first hand ABA opposition to a truly Christian legal education.

45. P. Johnson, Reason In The Balance (InterVarsity Press: 1995).

46. 410 U.S. 113 (1973).

47. *Id.* at 153.

48. *Id.* at 160-66.

49. Titus, "Roe v. Wade," The Forecast 4-5 (Feb. 1996).

50. Ecclesiastes 11:5.

51. 478 U.S. 106 (1986).

52. *Id.* at 211.

53. *Id.* at 199. Other justices do not necessarily share Blackmun's vehement opposition to religious underpinnings to civil law. Nevertheless, they are not receptive to religious claims for another reason, fear of violation of current notions of separation of church and state. See *Harris v. McRae*, 448 U.S. 297, 319-20 (1980) (Stewart, J.).

54. *Id.* at 208-09.

55. H.L.A. Hart, Law, Liberty and Morality 13, 15 (Stanford; 1962).

56. P. Johnson, "Darwinism's Rules of Reasoning," in Darwinism: Science or Philosophy 15 (Buell & Herndon, eds, 1994).

57. II Peter 2:6.

Other writings by Herbert W. Titus:

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