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LAW AS ESCHATOLOGY

JOHN D. HASKELL & JESSICA FISH[†]

I. INTRODUCTION: ESCHATOLOGY IN THE LOGIC OF MODERNITY

Eschatology is a key theological concept within Christian theology, derived from the Greek to designate the study of the “end of things.”¹ As part of theological discourse, eschatology would at first glance, therefore, appear at most a curiosity to scholarship concerning global governance since the mainstream narrative depicts modernity as the heir to religious disenchantment and the rise of an empirical intellectualism.² In this progress story that the disciplines tell themselves (theology-politics-law), secular forms of legal and political philosophy may draw upon theological conceptions, but they empty these doctrines of their theological content. Religious thought, in other words, may be important, but its impact enters the contemporary field of governance as either an external phenomenon (e.g., the rise of political Islam) or an ethical legacy (e.g., salvation-dignity, church-culture/nation, God-state, and so forth).³

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¹ For useful introductory discussions into theological eschatology, see MILLARD J. ERICKSON, *A BASIC GUIDE TO ESCHATOLOGY: MAKING SENSE OF THE MILLENNIUM* (1998). See also J. DWIGHT PENTECOST, *THINGS TO COME: A STUDY IN BIBLICAL ESCHATOLOGY* (1965).

² See David Kennedy, *Losing Faith in the Secular: Law, Religion, and the Culture of International Governance*, in *RELIGION AND INTERNATIONAL LAW* 309 (1999). “Religion begins as a social force, is transformed into a ‘philosophy’ and survives only as a set of ‘principles,’ guiding the practice of institutions.” David Kennedy, *Images of Religion in International Legal Theory*, in *RELIGION AND INTERNATIONAL LAW* 145, 146 (1999).

³ For an expanded thesis that relies on both of these themes, see, for example, RICHARD FALK, *RELIGION AND HUMANE GLOBAL GOVERNANCE* 35–36, 55 (2001).

This Article instead investigates how eschatological forms of argument operate within theology and secular modes of contemporary law and policy.⁴ In other words, rather than thinking about religion or law or politics as something happening “out there,” our interest is focused on the knowledge production of these disciplines—in particular, scholarship—with a specific preoccupation to work out how the argumentative structure of the eschatological concept operates in its various complexities. To do so, we begin this Article by providing a more rigorous analysis than usually offered within legal scholarship for how eschatology “works” within theology, with the caveat that the study is limited to the Christian tradition broadly, and will incorporate a variety of different Christian sources (e.g., Augustinian, Pauline) without speaking specifically from any particular tradition.⁵ The purpose, in other words, is to bring out some central thematic concerns that frame theological discussions of eschatology, especially the concepts of the apocalypse and the Messiah. Second, we turn to inspect the two main traditions that characterize twentieth century modernity—Marxist political philosophy and liberal cosmopolitan rule of law—and evaluate how each claim to stand in for a modernity that distances itself from religion and equally, how each actually reenacts theological modes of eschatological logic.⁶ Our argument here is not that religion functions as a “deep structure” to legal or political frameworks, but rather that a particular set of conceptual or rhetorical moves associated with theological eschatology overlaps with contemporary legal and political

⁴ For further studies analyzing how this tension between sacred and secular is constructed in international legal argument, see, for example, Nathaniel Berman, *“The Sacred Conspiracy”: Religion, Nationalism, and the Crisis of Internationalism*, 25 LEIDEN J. INT’L L. 9 (2012).

⁵ It is outside the scope of this present analysis, but scholarship could equally explore these themes from other religious orientations. For a provocative study that addresses the lack of focus on Jewish influences on international law, see REUT Yael Paz, *A GATEWAY BETWEEN A DISTANT GOD AND A CRUEL WORLD: THE CONTRIBUTION OF JEWISH GERMAN-SPEAKING SCHOLARS TO INTERNATIONAL LAW* (2013). For a reading of law and policy approaches through “subaltern” spiritual traditions, see B.S. Chimni, *Alternative Visions of Just World Order: Six Tales from India*, 46 HARV. INT’L L.J. 389 (2005).

⁶ For a historical study of the constitutive overlap between modern conceptual frameworks of international law and Protestantism, see John D. Haskell, *Divine Immanence: The Evangelical Foundations of Modern Anglo-American Approaches to International Law*, 11 CHINESE J. INT’L L. 429 (2012).

philosophies in provocative ways that might call for future studies of how scholarship constructs the tension between religion and governance.⁷

II. THEOLOGICAL INTERPRETATIONS OF ESCHATOLOGY

Theological eschatology within the Christian tradition relies heavily on Judaism, especially its preoccupation with understanding the meaning of God's action and the working of the divine throughout human history, but breaks significantly in its reliance upon doctrines such as the Resurrection, the Final Judgment, and Heaven and Hell.⁸ In this Part, we will focus on three modes and three forms that constitute the (albeit complicated) range of Christian eschatological possibility. To begin, at least three modes characterize Christian approaches: Cosmos eschatology, National eschatology, and Personal eschatology.⁹ The first mode, Cosmos, is probably the most popular in theological literature, and focuses on the meaning of salvation for all existence (e.g., humanity, the world) in relation to New Testament teachings.¹⁰ The second mode, National, is most commonly associated with the Old Testament story of the Jews' quest for national self-determination as God's chosen people, and draws primarily upon prophetic texts.¹¹ The third

⁷ For a classical study on the importance of eschatology in relation to contemporary religious and political engagement, see JÜRGEN MOLTMANN, *THEOLOGY OF HOPE: ON THE GROUND AND THE IMPLICATIONS OF A CHRISTIAN ESCHATOLOGY* (1967).

⁸ There is, of course, a long history of anti-Semitism with Christianity, which was carried out through theological interpretations as much as it was through popular sentiment or political decrees. Just to reiterate, this Article is not making any claim about Jewish thought concerning sacred texts, but only how Christian eschatological arguments have presented its understanding of Old and New Testament texts. For a historical study that argues that Christian teaching helped facilitate anti-Semitism, see WILLIAM NICHOLLS, *CHRISTIAN ANTISEMITISM: A HISTORY OF HATE* (1993). On a personal level, I am grateful to Alan Nissel for pointing out some of my own religiously-oriented biases that colored prior drafts concerning international legal history.

⁹ See David Fergusson, *Eschatology*, in *THE CAMBRIDGE COMPANION TO CHRISTIAN DOCTRINE* 226, 228 (1997).

¹⁰ *Id.* For an Old Testament passage intimating this approach, see, for example, *Isaiah* 11:1-9.

¹¹ Fergusson, *supra* note 9. For another Old Testament passage that demonstrates this mode, see, for example, *Psalms* 98:3.

mode, Personal, emphasizes the possibility of personal redemption, most often linked to the Gospels in the New Testament.¹²

What defines each mode, in other words, is that the eschaton (the final, heaven-like stage of history) relates to a different subject, or type of subject, which may be analogized or distinguished from other subjects, themes, and normative persuasions.¹³ In Cosmos, for instance, the focus on “humanity” marginalizes any hegemonic (or hierarchical) attempt to assert a particular group or person to stand in for the “universal” or “chosen,” and which lends itself in contemporary literature to liberal “world religion” or comparative religion approaches that look for points of agreement that are supposedly common to all belief systems or human experience.¹⁴ Likewise, in National, the literature also focuses on a collective rather than the individual, but now divides into two contrasting approaches: on the one hand, vesting a particular group (e.g., Israel, America) with a distinct, almost metaphysical, calling; on the other hand, depicting this distinction as an apology for some underlying political or quasi-fanatic (and destructive) agenda that is antithetical to the well-being of humanity, or at least other marginalized subjects, and thereby opening the possibility of the resurfacing of the Cosmos argument to the extent that a turn to all humanity is a necessary rebuttal to any hegemonic claim by a particular group.¹⁵ In Personal, the central figure is the individual, who is viewed as both distinct from humanity (e.g., the owner of one’s actions, driven by unique anxieties and hopes) and God (e.g., subjective knowledge, mortal), and intimately

¹² Fergusson, *supra* note 9. For this eschatological mode in the New Testament text, see, for example, *Romans* 10:10.

¹³ The drive to realize the “eschaton” is a common theme within twentieth century political theory and theology, and even in popular literature. For perhaps the most infamous treatment of the eschaton in political-legal scholarship, see CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* (English ed. 2005) (1922). See also GERSHOM GORENBERG, *THE END OF DAYS: FUNDAMENTALISM AND THE STRUGGLE FOR THE TEMPLE MOUNT* (2000). In popular fiction, see, for example, ROBERT SHEA & ROBERT ANTON WILSON, *THE ILLUMINATUS! TRILOGY* (1975).

¹⁴ See Fergusson, *supra* note 9.

¹⁵ For an extended debate concerning this theme by three of the leading political philosophers today, see JUDITH BUTLER, ERNESTO LACLAU, & SLAVOJ ZIZEK, *CONTINGENCY, HEGEMONY, UNIVERSALITY: CONTEMPORARY DIALOGUES ON THE LEFT* (2000).

related to humanity (e.g., one of many equivalences that finds meaning only in relation to others) and God (e.g., the doctrine of divine immanence).¹⁶ Within the mode of Personal, and to an extent within Cosmos and the critical strand of National, the sensibility beneath the literature is thereby often concerned (even if indirectly) with ideas of individual rights and dignity, tolerance and freedom, and the oscillating relationship between the universal and the particular; and by contrast, within the more utopian versions of National, on the importance of hierarchical structures of meaning and experience (whether for humans or the universe), as well as clear delineations of authority and identity.

In addition to these modes, Christian eschatology often operates through three general forms of theological debate: Futuristic, Realized, and Inaugural.¹⁷ In Futuristic, the emphasis is on a particular event that is prophetically foretold but has not yet occurred.¹⁸ Within the Old Testament, this event is oriented specifically around the history of the Jewish people—namely, the actual descendants of Abraham forming a nation in the Promised Land which will ultimately rule the earth according to laws given by God.¹⁹ In contrast, Realized eschatological literature within Christian theology identifies the “event” as the end of days or the apocalypse and the coming of the Messiah.²⁰ Though New and Old Testament eschatology differ in their Futuristic form as to the subject of the event (e.g., Jewish people, the coming of the Messiah) and the process of its fulfilment (e.g., obeying the divine commandments, waiting faithfully for Christ’s return), they coincide in the certainty that the event will occur at some point in the future.²¹ In Inaugural, this “event” (the Messiah, the end days) is not only foretold, but has already commenced within human history and is currently being “worked out” (e.g., pre-millennialism, the doctrine of divine immanence).²²

¹⁶ *Id.*

¹⁷ See Neal DeRoo & John Panteleimon Manoussakis, *Introduction, in PHENOMENOLOGY AND ESCHATOLOGY: NOT YET IN THE NOW* 1, 5–7 (2009).

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 6. In the mid-to-late nineteenth century, this idea of humans already in a process of working the end of days out on earth became a dominant movement—in theology, discussed as post-millennialism, and in cultural histories of religion,

The Inaugural approach within the Christian tradition and the Futuristic approach within the context of the Old Testament operate here on common ground in contrast to Christian Futuristic approaches to the extent that the divine has not only communicated with humanity, but is actually already operating “through” humanity itself. In Realized, the event is a distinctly divine event, but rather than being foretold, it has actually already occurred and now waits to be more fully discovered, either on an individual or a collectively human level.²³ The Realized form thereby resembles the Christian Inaugural and Old Testament Futuristic to the extent that it focuses on human activity, but differs in that it relies on a passive, almost self-reflective action of retrieval, discovery, or awareness rather than some active “building of the Kingdom.”²⁴

These three forms of debate (Futuristic, Inaugural, Realized) may furthermore be compared with the three Christian modes of theological eschatology (Cosmic, National, Personal). All three forms of debate relate to Cosmic to the degree it depicts the calling of the divine not only to each individual human, but to creation in general and all humanity. The Inaugural and Realized, however, break from the utopian strand of the National to the extent that no single “nation” is singled out, except in the fact that there is a general distinction between believers and unbelievers (Inaugural) or those that are aware and unaware of the event already having occurred (Realized). The Futuristic allows for the possibility of the “National,” but tends to imply that no single group will be singled out above the others (except to the extent of “believers” or “predestined”).²⁵ In relation to the Personal, all three debates—as already noted—allow a place for the individual and all humanity, but the Realized and Inaugural

especially in the twentieth century, as the “social gospel.” There is a vast body of insightful literature documenting the transformation of these ideas in the Anglo-American space. See, e.g., CHARLES D. CASHDOLLAR, *THE TRANSFORMATION OF THEOLOGY, 1830-1890* (1989); see also ROBERT T. HANDY, *A CHRISTIAN AMERICA: PROTESTANT HOPES AND HISTORICAL REALITIES* (2d ed. 1984); WILLIAM R. HUTCHISON, *THE MODERNIST IMPULSE IN AMERICAN PROTESTANTISM* (1992); GEORGE M. MARSDEN, *THE EVANGELICAL MIND AND THE NEW SCHOOL PRESBYTERIAN EXPERIENCE: A CASE STUDY OF THOUGHT AND THEOLOGY IN NINETEENTH-CENTURY AMERICA* (2003); CLAUDE WELCH, *PROTESTANT THOUGHT IN THE NINETEENTH CENTURY, VOLUME I, 1799-1870* (1972).

²³ See DeRoo & Manoussakis, *supra* note 17, at 5.

²⁴ See *id.* at 5–6.

²⁵ See JONATHAN MENN, *BIBLICAL ESCHATOLOGY* 54 (2013).

bear the closest similarity to the extent that the divine operates within, or through, human experience (e.g., that humans partake in divinity).

The apocalypse and the Messiah are central and related themes that run through these modes and forms of theological eschatology. The apocalypse refers not to “the end of days,” but rather “revealed knowledge,” which in Christian theology is preeminently associated with the phenomenon of the Messiah.²⁶ This revealed knowledge differs in terms of both its content and the subject to whom it is addressed.²⁷ For example, in relation to the three modes of theological eschatology, the revealed knowledge differs to the extent that it speaks to different subjects, whether that constitutes all humanity or individuals, or to a particular “nation” or specific collective. More interestingly, however, is the way that this revealed knowledge is transfigured under the three forms of debate in relation to the addressed subject.²⁸ In Futuristic, the revealed knowledge is already “out of the bag,” but its specific time (e.g., when the “end of days” will occur) and character (e.g., to have a “full knowledge” of God/Christ) is still, on some level, an enigma.²⁹ Rather than work to better understand its secrets, the initiate is counselled to be content with what has already been given, to be faithful to this partial truth, and to await its further revelation.³⁰ In the Inaugural, the revealed knowledge is again a partial truth already conveyed to humanity as in the Futuristic, only now there is no longer the passive wait, but instead an active process of unveiling its secrets within human history, whether this is through the working of God, the tenacity of the faithful, or some combination of the two. In the Realized, the knowledge has again already been revealed, but its secret is often unperceived—again like the Inaugural—awaiting the active enlightenment, or discovery, of its terms by humanity.³¹

To draw a literary analogy from the Sherlock Holmes detective stories of Conan Doyle, in all three forms of debate, the enigma of the secret is posed at the beginning of the narrative,

²⁶ See JACOB TAUBES, *OCIDENTAL ESCHATOLOGY* 4 (David Ratmoko trans., Stanford Univ. Press 2009) (1947).

²⁷ See *id.*

²⁸ See DeRoo & Manoussakis, *supra* note 17, at 5.

²⁹ See *id.*

³⁰ See *id.*

³¹ See *id.* at 5–6.

but its revelation differs depending on the perspective of the actor.³² Within Futuristic, the subject of theology is much like Watson, awaiting (with certainty) Holmes to bring together the initial clues in some final climactic revelation, though the timing and specific conclusion beyond his (or, for that matter, Lestrade's) prediction. In Inaugural, the subject of theology is associated more closely with Sherlock Holmes, the knowledge only partially revealed and requiring further investigation for Holmes "to take the case." Again, that the secret which necessitates the case (and the role of Holmes in the first place) will be fully revealed is never really at issue, but its fruition is uncertain, and how it will come about seems a mixture of Holmes' ingenuity and external actors or occurrences, the point being that the secret is being slowly revealed throughout the narrative. In relation to the Realized, the revealed knowledge, or evidence, is already there in plain sight; what is missing is Holmes being able to piece together the clues into the final tapestry—the solution, or revealed knowledge, is what was there all along, only not initially perceived.

III. ESCHATOLOGY IN MARXIST AND LIBERAL APPROACHES TO LAW AND POLICY

Modernity generally designates a set of historical and intellectual factors that influenced a break within eschatological literature: the past now associated with theology, the present identified more closely with political philosophy or international law. In the following section, we look more closely at how this relationship operates in the contemporary framework of "post-secularism" (specifically in relation to liberal cosmopolitan rule of law and political Marxist ideology). However, in this Part, our interest is not to attempt to identify all the various factors of "modernity" nor debate its actual influence on theology; it is to think of "modernity" as a rhetorical technique within eschatological literature that raises certain themes to create the conditions for even thinking about political or legal eschatology as something different, but potentially related to, its theological counterpart (especially in terms of its modes and forms of debate).

³² See PIERRE MACHEREY, *A THEORY OF LITERARY PRODUCTION* 34–38 (1978).

First, modernity stands for the idea that eschatology, as part of a broader phenomenon within Western European thought, witnessed an anthropomorphic turn in the wake of the “death of God” that breaks with theological traditions.³³ The German legal historian and diplomat, Wilhelm Grewe, recites this standard view:

[The modern state] emerged only shortly before Machiavelli’s time as a general term for the political body as such. . . . First, the characteristic quality of the modern State is its “sovereignty.” . . . [I]ndividual States emancipated themselves from traditional community ties rooted in the Holy Roman Empire and Church and stood beside each other as subjects of equal rank and dignity Second . . . is its rational character. . . . [T]he Reformation and Renaissance contributed to the development of a rational secular concept of the State. . . . [B]ased on a rational system of law, a calculable legal system in which ritual-religious and superstitious elements do not play a role . . . handled by rationally acting, legally educated professional officials. . . . Third, the individualism of the modern State’s basic structure was . . . [a] significant quality on which its edifice was built . . . [whereby] individual members . . . were emancipated from the communitarian ties which had bound them together in earlier periods. . . . Fourth, the specific linkage of the modern State with the economic system of capitalism was of critical importance.³⁴

The loss of religious faith, therefore, inaugurates a series of shifts in intellectual and political spheres. The relationship between the Church and the State (e.g., the two swords doctrine) is recalibrated over the course of the eighteenth and nineteenth centuries whereby the status of the Church, in many respects, is supplanted by the State and the rule of law.³⁵ Furthermore, the secularization of life bleeds over into the realm of knowledge production, with academics and policy makers no longer interested in metaphysical debates grounded in sacred sources,

³³ See CHARLES TAYLOR, *HEGEL* 5 (1975).

³⁴ WILHELM GREWE, *THE EPOCHS OF INTERNATIONAL LAW* 166–67 (Michael Byers trans., Walter de Gruyter 2000) (1984) (footnotes omitted); see also MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 77–78, 94 (Cambridge Univ. Press 2005) (1989).

³⁵ See, e.g., SCHMITT, *supra* note 13, at 36.

but instead interested in collecting an almost endless supply of empirical data, which must be processed through scientifically grounded methodologies.³⁶

Second, despite its posited differences, modernity can be seen to closely resemble the internal logic at play in theological eschatology. Knowledge for instance, is subject to an open-ended process of revelation that requires human ingenuity and reason (Inaugural), but its clues are only partially already revealed in that even if the laws of nature are constant, only with new technology (e.g., the telescope) can humans even become aware of their existence (a mixture of Revealed and Inaugural).³⁷ In other words, the emphasis on revelation as epoch-making (Futuristic/Revealed/Inaugural) and working through human history (Personal/National/Inaugural/Revealed), as well as the relationship between the sovereign and its subjects (Personal/National) and the relationship between humanity and the laws of nature (Cosmic), suggests the usefulness of thinking about philosophy (e.g., politics, law) and theology in conjunction—not only as something that moves from one form of discussion to another, but as addressing long-standing themes in (superficially) different terminologies.

The possibility of the intimate but distinct relationship *between* theological and political/legal variations within eschatological literature, rather than thinking of eschatology as a theme *within* theological and philosophical/legal traditions, is made more explicitly clear in the contemporary discussion over “post-secularism.” Again, the point here is not that post-secularism denotes a new historical condition that in turn affects intellectual debate, but rather that it acts as a theoretical framework that is useful for thinking about theology and philosophy/law as a constitutive rhetorical trope for contemporary scholarship. In this Part, to address philosophical interpretations of eschatology, we focus on what are perhaps the two principal ideologies that dominated the twentieth century modernity: Marxist political philosophy and Liberal Cosmopolitan approaches to the rule of law.

³⁶ For a critique of this empirical approach as designating a more “concrete” methodology of analysis, see Louis Althusser, *On the Materialist Dialectic: On the Unevenness of Origins*, in FOR MARX 136, 149–62 (Ben Brewster trans., 2005) (1965).

³⁷ See OLIVER DAVIES, *THEOLOGY OF TRANSFORMATION: FAITH, FREEDOM, AND THE CHRISTIAN ACT* 45 (2013).

On the most superficial level, Marxism is held to be firmly anti-religious—rigorously materialistic, denying any idea of metaphysical truth or spiritual transcendence.³⁸ Though this seems at least partly true, Marxism does seem to function within the framework of eschatology and allows for its evaluation of theological interpretations.³⁹ First, in terms of the Cosmic, Marxism addresses humanity in a universal register (e.g., world revolution, global proletariat).⁴⁰ Second, though it breaks with the utopian strand of the National to the extent that no one nation will ultimately be “the chosen,” it still firmly preserves the idea of particular nation-states being the site of the revolutionary vanguard in the short term.⁴¹ Third, the Personal is given up to the extent that there is no longer any conception of an “individual” outside of a “class” or of individual freedom outside of collective revolution, but the Personal continues to resonate in the promise that communism will result in the end of alienation not only of the class, but of the individual, in relation to their labour.⁴² Fourth, the Futuristic operates within Marxist theory in that the naming of the event is foretold (world communist revolution) and sets the terms of struggle (e.g., the sides of good and evil, the ultimate hope), but no clear indication is provided

³⁸ See 5 SAMUEL GREGG, *THE MODERN PAPACY* 89 (John Meadowcroft ed., 2009).

³⁹ See generally ROLAND BOER, *CRITICISM OF HEAVEN: ON MARXISM AND THEOLOGY* (2009) (analyzing how theological writings infiltrate and can be useful for analyzing Marxist literature).

⁴⁰ For a discussion of Marxism’s universalist character and its similarity to Christianity, see ALAIN BADIOU, *SAINT PAUL: THE FOUNDATION OF UNIVERSALISM* (Ray Brassier trans., Stanford Univ. Press 2003) (1997). See also STANISLAS BRETON, *A RADICAL PHILOSOPHY OF SAINT PAUL* (Joseph N. Ballan trans., Columbia Univ. Press 2011) (1988).

⁴¹ The possibility of one group or context standing in for the universal is a long-standing contention among policy makers and scholars, within and outside of the Marxist tradition—for example, socialism in one country versus world revolution. For a brief, but entertaining argument of the particular standing in for a revolutionary legacy that ties together mysticism and religion and political philosophy, see Walter Benjamin, *Theses on the Philosophy of History*, in *ILLUMINATIONS: ESSAYS AND REFLECTIONS* 253, 255 (1968).

⁴² For an application of Marx’s theory of estrangement to twentieth century industrial society, see HERBERT MARCUSE, *ONE-DIMENSIONAL MAN: STUDIES IN THE IDEOLOGY OF ADVANCED INDUSTRIAL SOCIETY* (Beacon Press 2d ed. 1991) (1964). For a critique of Marxist alienation on the basis that it posits an equally reified notion of “humanity,” see Louis Althusser, *Marxism and Humanism*, in *FOR MARX*, *supra* note 36, at 209–14.

for how it will be ultimately achieved or when it will occur.⁴³ Fifth, in relation to the Inaugural, Marxism also necessitates the working out of the event through humanity, an unfolding of class struggle in history towards the coming revolution.⁴⁴ Though no metaphysical entity guarantees the eschaton in Marxism, its Futuristic and Inaugural elements still adopt a quasi-metaphysical character: on the one hand, requiring the certainty in the need for communist revolution as the pre-condition of one's class identity, and on the other hand, affirming that the very nature of the contradictions within capitalism necessitate the eventual coming revolution. Finally, in relation to the Revealed, Marxism is distinguished by its denial that emancipation, or the revolution, has already occurred and only needs to be perceived, yet corresponds in that it holds that class struggle within capitalism is already a reality, which is only not fully perceived due to the power of ideology.⁴⁵

Liberal Cosmopolitan theories concerning the rule of law and politics also provide interesting perspectives on eschatology.⁴⁶ First, the Cosmic, like in Marxism, is prevalent in that Liberal Cosmopolitan approaches aspire towards total inclusion of all variations of human identity (e.g., universal). As the eminent Finnish legal historian and diplomat, Martti Koskenniemi extols:

[We] must remain open for other voices, other expressions of "lack" (or injustice) that, when given standing under it, redefine the scope of its universality. . . . [I]t has no essence [E]very decision process with an aspiration to inclusiveness must constantly negotiate its own boundaries as it is challenged by new claims or surrounded by new silences. Yet because it is unachieved, it can sustain (radical) democracy and political progress, and resist accepting as universal the claims it has

⁴³ For an eloquent (and best-selling) fictional capture of this theme by a legal-political theorist, see CHINA MIEVILLE, *IRON COUNCIL* 1–2 (2004).

⁴⁴ See Raymond A. Belliotti, *Marxist Jurisprudence: Historical Necessity and Radical Contingency*, 4 CANADIAN J. OF LAW & JURISPRUDENCE 145, 145–48 (1991).

⁴⁵ For an example of the traditional Marxist approach to ideology within international legal scholarship, see, for example, Robert Knox & Paavo Kotiaho, *Beyond Competing Liberalisms: The WTO as Class Project*, 23 SOC. AND LEGAL STUD. 403 (2014). For a critique of this approach to "ideology," see Louis Althusser, *Ideology and Ideological State Apparatuses: Notes Toward an Investigation*, in *LENIN AND PHILOSOPHY AND OTHER ESSAYS* 85 (2001).

⁴⁶ See ANNA MARIE SMITH, LACLAU AND MOUFFE: THE RADICAL DEMOCRATIC IMAGINARY 1–6 (1998); see also POLITICAL THEOLOGIES: PUBLIC RELIGIONS IN A POST-SECULAR WORLD 87–88 (Hent de Vries & Lawrence E. Sullivan eds., 2006).

done most to recognize in the past. . . precisely because . . . the universal they embody remains only a “horizon.”⁴⁷ . . . [B]y remaining “empty,” a negative instead of a positive datum, and thus avoids the danger of imperialism.⁴⁸

Of course, there is no realized fulfillment of absolute inclusion, much as any religious denomination is built on the concept that not all the world will be initiated into salvation. The point here is that the gateway to salvation, the aspiration to a universalism, is held out as a legitimate goal, a standard to construct social and personal organization. Indeed (and we pick up this theme later), as we can see in Koskenniemi’s argument, it is exactly the combination of fidelity and failure towards universalism that grounds the Liberal Cosmopolitan argument for the rule of law.

Second, in terms of the National, Liberal Cosmopolitanism adopts the nation-state as a meaningful unit for organizing human life and holds out certain nations (to the extent that they are “democratic” and “liberal”) as representations or leaders of universal political aspirations.⁴⁹ “American nationalism, properly understood, has a deeply cosmopolitan dimension, both at home and abroad,” argues Anne-Marie Slaughter and Thomas Hale, “Recovering this understanding of American nationalism—or, as most Americans would recognize it, patriotism—is vital . . . for America’s ability to work with other nations to promote a better life for all the world’s citizens.”⁵⁰ Critics of authors like Slaughter may argue that the equation of a particular group with a universal truth is a cynical or unreflective act of asserting a specific group to stand in for a universal, which invariably plays into a history of Western imperial policy (e.g., European states holding themselves out as the standard of civilization to justify colonial possessions) but even so, any critique of the United States, for example, as the manipulative hegemony is only a valid critique so long as the standard it proposes—democratic universalism—is seen as

⁴⁷ MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960*, at 507–08 (2010).

⁴⁸ *Id.* at 504.

⁴⁹ See, e.g., Anne-Marie Slaughter & Thomas Hale, *Calling All Patriots: The Cosmopolitan Appeal of Americanism*, in *CULTURAL POLITICS IN A GLOBAL AGE: UNCERTAINTY, SOLIDARITY AND INNOVATION* 176, 177, 180–81 (2008).

⁵⁰ See *id.* at 177; see also ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 3–7, 10, 66–69 (2004).

valid.⁵¹ In this sense, a Western European intellectual tradition, deprived of its European political aspirations over the course of the twentieth century, becomes a way to chastise its successor, the Anglo-American counterpart, from which it continues, in real terms, to benefit.⁵²

Third, the Personal emphasis on individual subjects is central to Liberal Cosmopolitan theories' emphasis on individualistic emancipation and the opportunity for self-determination. "[T]here are different structural ways to interpret [the right to self-determination]," explains Karen Knopp, "Some authors . . . broaden the interpretation of self-determination by establishing the independent existence of new categories and rules."⁵³ "Others achieve the same result by imposing . . . overarching principles and other unifying devices."⁵⁴ International law, in other words, is not simply the domain of states, but the expression of cultures and individuals struggling for autonomy and well-being. Again, the problem here surfaces when the notion of the "culture" or "individual" is interrogated too closely. What counts as the autonomous self almost immediately begins to look strikingly similar to the cultured Western European personality.⁵⁵

Fourth, Liberal Cosmopolitan perspectives define themselves specifically in opposition to any Futuristic model that would claim a specified end-point to revealed truth. "The

⁵¹ Robert Sloane writes:

Paradoxically, then, the feature of comprehensive "conceptions of the good" that proves most adverse to an international order structured by respect for universal human rights is dogmatic universalism—the claim that one system of value prescribes what "is right" for everyone and can therefore be justifiably imposed, through violence if necessary, on others.

Robert Sloane, *Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights*, 34 VAND. J. TRANSNAT'L L. 527, 591 (2001); see *id.* at 558–59.

⁵² For a fascinating critique of European "progressive" arguments that claim the United States to be acting "imperialist" on the basis of legal violations, see Akbar Rasulov, *Writing About Empire: Remarks on the Logic of a Discourse*, 23 LEIDEN J. INT'L L. 449, 463–68 (2010).

⁵³ See KAREN KNOPP, DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW 50 (2004).

⁵⁴ *Id.* For a study of the tensions between competing regimes of legal-political determination and its importance to democratic modes of governance, see NICO KRISCH, BEYOND CONSTITUTIONALISM: THE PLURALIST STRUCTURE OF POSTNATIONAL LAW 27–28, 67, 69, 103–04 (2010).

⁵⁵ For an elaboration on this argument, see John D. Haskell, *The TWAIL Paradox*, 1 RGNUL FIN. & MERCANTILE L. REV., 11 (2014).

universal . . . does not have a concrete content . . . but is an always receding horizon resulting from the expansion of an indefinite chain of equivalent demands,” writes Ernesto Laclau, “[I]ts non-solution is the very precondition of democracy.”⁵⁶ At the most immediate level, the point here is that any attempt to claim an absolute truth, or an absolute link between a particular identity and an absolute truth, is the foundation for a fascist project that will be utilized to oppress those that are deemed “outside.”⁵⁷ And, on a deeper level, this counsels a specific professional sensibility that is attuned to ambiguity, difference, and the margins of thought. In more dry institutional terms, this is the logic of the adviser, not the political decision-maker.⁵⁸ Law’s fidelity to theology is the story of the faithful to their sovereign.

Fifth, Liberal Democracy draws heavily on the Inaugural to reorient any revealed truth, not simply as an opened process, but oriented within human experience. This seems central to the ways that the international legal profession asserts authority via a constant progress narrative, whether that entails transitioning from natural to positivist to an anthropomorphically grounded regime of law (from doctrine to the state to cultures and individuals), from abstract armchair intellectualism to empirically nuanced socio-legal evaluations and cost-benefit analysis of consumer desires, and so forth.⁵⁹ Subjectivity here is a spiritual quest and a materialist prison house, where if the kingdom of God may be realized on earth, which we are encouraged to strive for, it now takes on a rather pedestrian sheen. Consider, for example, the following exchange between leading scholars within law and policy at a retirement lecture in Cambridge:

Tony Carty: [T]he notion of perfectability, the notion that absolute ideals can be reached, is something which modernity has rejected since Kant. We are simply closed in on ourselves, in our own subjectivities and in our own materiality, and that is what Freud and Marx stress so strongly. It is breaking out of

⁵⁶ See ERNESTO LACLAU, EMANCIPATION(S) 34–35 (2007).

⁵⁷ See Guang Xia, *Ernesto Laclau*, Emancipations(s), 24 CANADIAN J. OF SOC. 154, 155 (1999) (reviewing ERNESTO LACLAU, EMANCIPATION(S) (1996)).

⁵⁸ See, e.g., Martti Koskenniemi, *Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization*, 8 THEORETICAL INQUIRIES IN L. 9, 11–12 (2007).

⁵⁹ See *id.* at 12–14.

that into some transcendent mode which I see Schiller and Rousseau and others (going back to Christ as well) trying to achieve. Now how that is achieved is not for me an intellectual process; it is a spiritual quest.

Tom Franck: Well our mire is, to me, the best mire on offer, especially when compared to all the other mires. We tried many other mires—dictatorship of individuals or of the proletariat, consulting the entrails . . . I like our mire.

David Kennedy: I think there is a serious aspect to that too, which is that there is also great liberation in the idea that everybody is trapped in their own subjectivity and in their own materiality, not just alone but with other people . . .

James Crawford: It is called democracy.⁶⁰

Sixth, in relation to the Revealed, Liberal Cosmopolitan approaches to the rule of law deny that there is any complete truth already having occurred in human history, though ironically, in doing so, it holds out this awareness of the impossibility of teleological fulfillment in its theory as itself an unquestionable realization in human history, thereby resembling a claim to an “end of history,” which has already occurred and only needs to be more fully realized.⁶¹ In a similar move to the Slaughter version of American cosmopolitan exceptionalism, the legal scholar Paul Campos explains that liberal indeterminacy as an intellectual and legal-political project all-too-easily slips into “the very dogmatic systems that it once rebelled against” with the “potential to become every bit as monistic, compulsory, and intolerant of any significant deviation from the social verities as the traditional modes of belief it derided and displaced.”⁶²

What is slowly becoming clear is that there is, at the very least, a formal analogy that may be drawn between “secular” conceptual frameworks of governance (e.g., Marxist political theory, a liberal cosmopolitan rule of law) and theological eschatology, and which might allow for new ways to understand how our argumentative maps operate in law and policy today and how they might be more open to religious affiliations that are always appreciated. But we might push this analogy further to

⁶⁰ Review Essay Symposium, *Philip Allott's Eunomia and The Health of Nations Thinking Another World: 'This Cannot Be How the World Was Meant To Be,'* 16 EUR. J. INT'L L. 255, 282–83 (2005).

⁶¹ See Paul F. Campos, Essay, *Secular Fundamentalism*, 94 COLUM. L. REV. 1814, 1822–24 (1994).

⁶² See *id.* at 1825.

uncover a deeper and more overlapping set of eschatological themes functioning with legal, political, and theological vocabularies. In other words, eschatological reasoning collapses these differing regimes of knowledge and thereby destabilizes some of the dominant narratives the legal discipline tells itself. To demonstrate this, we must return briefly to the nineteenth century and trace an eschatologically colored line of argument into our contemporary moment.

The story begins with the German anthropologist and philosopher, Ludwig Feuerbach, and his book, *The Essence of Christianity*. Expounding his philosophy of human alienation, Feuerbach argues that in a “true or anthropological essence of religion,” God should no longer be understood as an actual metaphysical presence (“God is reduced to a negative being”), but as the formal projection of the features and needs of humanity, especially the more virtuous aspects of our inner nature.⁶³ “[God] is the principle of my salvation, of my good sentiments and actions, and hence my own good principle and essence”⁶⁴ In misrecognizing the anthropological character of the divine, Feuerbach argues that humanity becomes alienated from its divine potential to speak a more perfect social world into existence, and consequently ends up reproducing, or at least tacitly accepting, the irrationalities and imperfections of the current situation.⁶⁵ Rather than despair, however, Feuerbach presents this realization as cause for celebration, for if perfection, or non-alienation (e.g., universalism) had not been attainable, then imperfection would not have been experienced in the first place as imperfection. In other words, the failures of political (and personal) experience do not undermine our guiding claims and ideological values as either insincere or misguided, but instead constitute the actual proof of their value and necessity, and the surest guarantee that we are merely passing through a transitory stage to some more perfect realization of our divine capacities.⁶⁶

⁶³ LUDWIG FEUERBACH, *THE ESSENCE OF CHRISTIANITY*, available at <https://www.marxists.org/reference/archive/feuerbach/works/essence/ec11.htm> (last visited May 19, 2015).

⁶⁴ *Id.*

⁶⁵ PETER C. CALDWELL, *LOVE, DEATH, AND REVOLUTION IN CENTRAL EUROPE* 17–18 (2009).

⁶⁶ Akbar Rasulov introduced me to the “Feuerbachian analogy,” and I am grateful for his generosity in providing a working paper on the topic. See Akbar

This Feuerbachian apology is mimicked by contemporary political philosophers and legal theorists in support of the liberal cosmopolitan project as the universal (and paradoxically, sole) site, or measurement, of human progress and emancipatory politics.⁶⁷ First, liberal cosmopolitanism, like God, is emptied of any dogmatic, or positive, content to become “reduced to a negative being,”⁶⁸ its universalism premised on remaining “‘empty,’ a negative instead of a positive datum.”⁶⁹ Second, this emptiness does not do away with its necessity, but rather serves as the incarnation, or formal embodiment of the ideal aspirations and nature of humanity. Thus, just as God is “nothing more than the representations of the powers of the human mind, expressed in the language of metaphor and hyperbole,”⁷⁰ international law represents the formal, or “ideal relationship between free individuals and communities[,] . . . an aspiration of how the world might be, if only we were better,”⁷¹ an “idea of justice . . . and an idea of democracy,” the formality of a structural messianism.⁷² Collapsing the distinction between a

Rasulov, *Universality and the Ruses of the International Law Reason: A Tale of Two Scandals*, YOUTUBE (Mar. 4, 2011), <https://www.youtube.com/watch?v=zToDR1jVqAU>.

⁶⁷ Akbar Rasulov states:

The modern international project builds its approach to the subject of international law’s universality . . . [and is] essentially . . . based . . . [on] the Feuerbachian philosophy of human alienation . . . Where Feuerbach speaks of the self-inflicted alienation of the human spirit, the dominant dogma of the modern international project speaks of international law’s unrealized potential for universality . . . Where Feuerbach speaks of a human essence transcending its own alienation by realizing its authentic potential for infinity, the dominant dogma speaks of the vindication of international law’s universalist promise brought by the self-realization of legal universality secured by an intense self-reform of the international law field . . . The tags and labels are different, but the underlying logic and landscape of ideas are essentially the same.

Id.

⁶⁸ FEUERBACH, *supra* note 63.

⁶⁹ See KOSKENNIEMI, *supra* note 48, at 504.

⁷⁰ SIDNEY HOOK, FROM HEGEL TO MARX: STUDIES IN THE INTELLECTUAL DEVELOPMENT OF KARL MARX 276 (1950) (quoting Feuerbach).

⁷¹ Martti Koskeniemi, *Formalism, Fragmentation, Freedom: Kantian Themes in Today’s International Law* (2005), available at [http://www.helsinki.fi/eci/Publications/Koskeniemi/MFrankfurt-Formalism-05h\[1\].pdf](http://www.helsinki.fi/eci/Publications/Koskeniemi/MFrankfurt-Formalism-05h[1].pdf).

⁷² JACQUES DERRIDA, SPECTERS OF MARX: THE STATE OF THE DEBT, THE WORK OF MOURNING AND THE NEW INTERNATIONAL 74 (Bernd Magnus & Stephen Cullenberg eds., Peggy Kamuf trans., 1994). See generally JOHN D. CAPUTO, THE PRAYERS AND TEARS OF JACQUES DERRIDA: RELIGION WITHOUT RELIGION (1997).

Christian and secular practice of faith and politics, the “internal morality” of international law therefore functions in striking similarity to the law of the Old Testament or the divine character of Christ, as the aesthetic (abstracted) standard against which initiates discover and measure their own aspirations and efforts, whereby our failures merely testify to the transcendent (e.g., universal) essence of its promise.⁷³ Like the mystics of Western European Christian theology, modern legal theorists of a post-foundational persuasion resist the desire to soil the sublime ineffability of the divine (e.g., by a direct “naming” of the particular site of the universal), but paradoxically, as Paul Campos pointed out earlier, it is exactly by professing their radical awareness of the irreducible character of alterity in all things that international law regains its claim to universality, both as a political backdrop (e.g., entitled to universal application as a neutral, open field requiring its detached cores of skilled practitioners) and, in a quasi-natural law register, as a reflection of the divine plan (e.g., no longer the embodiment of metaphysical substantive norms dictated by God, but nevertheless reflecting the divine, or natural, void that grounds all existence, and the logic of the divine creative process).

The law’s internal morality . . . [is] so many names for universality and so many opportunities for moral failure . . . [b]ut without law, there would be no such scale. And without such scales[,] . . . life would be—well—livable but unlovely . . . [L]aw’s failures, in this regard, only highlight the significance of its aspirations.⁷⁴ [If] calling for such (continued) reform seems too mundane a conclusion in an age when even international lawyers are losing faith in the secular—well, it can always be redescribed in the messianic language of present imperfection merely highlighting the brightness of law’s promise: . . . a self-correcting, secular project whose meaning would nonetheless be given by a horizon of transcendence.⁷⁵ This is a messianic argument and a Christian vision. The fallibility of present society is taken for granted. So is the fallibility of the human beings that inhabit that society and the law they create out of their narrow vision. This is not a recipe for resignation, however, but rather a cause for joy and

⁷³ See *Galatians* 2:20 (Revised Standard Version New Testament).

⁷⁴ See Koskenniemi, *supra* note 71, at 23–25.

⁷⁵ Martti Koskenniemi, *International Law as Political Theology: How To Read the Nomos der Erde?*, 11 *CONSTELLATIONS* 492, 507 (2004) (footnotes omitted).

anticipation And the call for proselytism follows naturally: “The liberation has begun, but it does not yet engage the majority of the world’s people.”⁷⁶

The message here is that the ideals formally encoded in international law and the practice of cosmopolitan democracy embody the core “essence” of humanity, and the failures to realize these ideals are not the fault of the ideals themselves, but the fact that they exist within an imperfect, and often violent world. The underlying assumption of the message is that the cosmopolitan international legal order offers a neutral, and thereby inclusive, field of political engagement where disparate angles may negotiate their particular differences in peaceful, though antagonistic, deliberation. To put this more directly in post-foundational terminology, authors posit the cosmopolitan democratic model of governance as the concrete expression of an “absent present,” which is believed itself to be the natural or a priori background/pre-condition that enables the play of political contestation/identity, but conversely, is not itself captured within the antagonisms and contingency of historical processes. The challenge that emerges for cosmopolitan lawyers and policy makers, therefore, is the trilateral call of the missionary: namely, to preserve the “purity” of its ideals from this-worldly corruptions (e.g., to focus on heavenly, not earthly, things), to preach inclusion (e.g., salvation as a “new man”) through the sincere effort to imitate this “pure being of the system” (e.g., to live “like Christ”), and to widen the spheres of its application to increasingly embrace longer chains of equivalences (e.g., the Pauline message that all are equal under God).

In my mind, this logic fundamentally mischaracterizes the nature of the political subject in a two-step reactionary defense of the status quo: first, abstracting cosmopolitan ideals from any “deep” structural criticism that adds up to an implicit act of “de-politicization”; and second, through projecting politics outward, both “canonizing” the basic structure and logic of cosmopolitan democracy and “naturalizing” the conception of a fallen world of

⁷⁶ Martti Koskenniemi, *Legal Cosmopolitanism: Tom Franck’s Messianic World*, 35 N.Y.U. J. INT’L L. & POL. 471, 486 (2003). There is a dense body of literature engaging with Koskenniemi’s legal philosophy. For an interesting perspective on these specific ideas, see Paavo Kotiaho, *A Return to Koskenniemi; or the Disconcerting Co-Optation of Rupture* (Helsinki Legal Studies Research Paper No. 2, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1823284.

power politics to explain when these ideals fail. This de-politicization is carried out through the claim to elicit some universalist “essence” or “experience” to humanity. To see this more clearly, we might begin by recalling the Feuerbach analogy in light of its criticism by Karl Marx in his *Theses on Feuerbach*:

Feuerbach starts out from the fact of religious self-estrangement, of the duplication of the world into a religious world and a secular one. His work consists in resolving the religious world into its secular basis.⁷⁷ He overlooks the fact that after completing this work, the chief thing still remains to be done. For the fact that the secular basis lifts off from itself and establishes itself in the clouds as an independent realm can only be explained by the inner strife and intrinsic contradictoriness of this secular basis. . . . ‘Religion is precisely that: the devious acknowledgement of man, through an intermediary.’⁷⁸ . . . [and the] failure to relate [these] fundamental concepts to the concrete situations and concrete activities out of which they grow and to which they must in some form or another be applied.⁷⁹

For Marx, in other words, to bring religion “down to earth” by revealing that “God” was merely the distorted projection of human essence simply restated the abstract, and alienating, logic of Christianity in the figure of the “abstract rational individual.”⁸⁰ What Feuerbach did not realize, suggests Marx, is that this “human essence” did not actually correlate to some universal set of human traits or experiences, which “could have been at any time and any place,” but were in fact the production of a particular site of hegemonic and antagonistic struggle.⁸¹ This “rationality” was inevitably the philosophical expression of capitalism and the dominant class at that time to the extent that it successfully obfuscated its political coercion as the natural, or ideal, state of affairs in the minds of its political subjects. To translate this into the terrain of legal theory, the political subject

⁷⁷ KARL MARX & FRIEDRICH ENGEL, *THE GERMAN IDEOLOGY* 570 (1998).

⁷⁸ Alberto Toscano, *Rethinking Marx and Religion*, MARXISMES AU XXI SIECLE, http://www.marxau21.fr/index.php?option=com_content&view=article&id=5:rethinking-marx-and-religion&catid=65:sur-la-religion-et-la-laicite&Itemid=88 (last visited May 19, 2015).

⁷⁹ Hook, *supra* note 70, at 299.

⁸⁰ Toscano, *supra* note 78.

⁸¹ *Id.*; see also Sydney Hook, *Marx and Feuerbach*, 3 NEW INT’L 47 (1936), available at <https://www.marxists.org/history/etol/writers/hook/1936/04/feuerbach.htm>.

(e.g., the community, the individual) is born under the cosmopolitan project through the order of “the Word” (e.g., law), which is seen to signify the possibility of some culture of commonality mediated through this “empty,” or pure, symbolic order capable of warding off the corrupting encroachments of dogmatic orthodoxies, instrumental rationalities, and political ambitions. The civilized rationality that defined the contours of Feuerbach’s “human essence” is now converted into the language of “balancing” and “social equilibrium” that presupposes the abstract cosmopolitan subject that is believed to exist in all people beneath their disparate cultures and experiences. The purpose of lawyers and policy makers now becomes to uphold “liberal democracy . . . [as] the ideal type of a political form of society and not to the ‘really existing’ liberal democratic societies’ in their complexity,” explains Chantal Mouffe, and that in doing so “aims at the creation of unity . . . [and] attempt[s] to tame hostility and to defuse the potential antagonism that exists in human relations.”⁸² In other words, following the logic of Christian imperialism, the formal ideals of cosmopolitan international law now become the new bar to recognition as a political subject, a neo-Kantian regulatory ideal:

[I]t underpins the historical process by evoking some quasi-transcendental limitation, some quasi-transcendental a priori that is not itself caught in the contingent historical process. . . . [And] thus ultimately leads to the Kantian distinction between some formal a priori framework and its contingent shifting historical examples. . . . [A]n ahistorical a priori Prohibition or Limitation which circumscribes every political struggle in advance. . . .⁸³

If we accept this political vision, international lawyers do not partake in partisan violence but seek to tame it as the neutral gatekeepers of the sublime indeterminacy that is called by the name liberal democracy. Of course, there is always the certain danger that political agendas or univocal reasoning will occasionally slip in to degrade the ineffability of the cosmopolitan ideals of law, but this is exactly the calling of the profession, to

⁸² See Chantal Mouffe, *Religion, Liberal Democracy, and Citizenship*, in *POLITICAL THEOLOGIES: PUBLIC RELIGIONS IN A POST-SECULAR WORLD* 318, 323 (Hent de Vries & Lawrence E. Sullivan eds., 2006).

⁸³ Slavoj Žižek, *Class Struggle or Postmodernism? Yes, Please!*, in *CONTINGENCY, HEGEMONY, UNIVERSALITY: CONTEMPORARY DIALOGUES ON THE LEFT* 90, 109 (2000).

tend to the pastoral threshold, to sweep away any demand that might subvert the spirit of international law or push antagonisms too far.⁸⁴ The sin of cosmopolitanism, in other words, is to propose any political project that might mount a serious challenge to the existing order on the basis that it will either lead to the “horrors of Gulag and Holocaust,” or alternatively, the crude phallic closure of the “pure temporality of difference” in favor of sure, illusory “foundation”:

[T]he classical ideal of Revolution . . . [involves] the idea that this violence had to be directed towards a very specific end, which was to give a *new foundation* to the social order. Now, from this point of view I am a reformist, not because my social aims are limited but simply because I do not believe that society has such a thing as a foundation. . . . Even the events which in the past *have been called* revolutions were only the overdetermination of a multiplicity of reforms which cover vast aspects of society but by no means the totality of them. The idea of turning the whole society upside-down does not make any sense. (Which does not mean that many ugly things were not committed in the attempt to perform this impossible operation.)⁸⁵

The entire artifice of the logic here reveals itself to stand or fall on the answer to a single question: If the symbolic field of the political subject is necessarily structured around a central void or impossibility, what is the condition, or character, of the void itself? In its legal/political expression, intellectuals have subsequently claimed the formal ideals of cosmopolitan democracy to operate within, or reflect, this supposedly universal experience of human subjectivity. As a negative form of universalism, whereby one may only enter into and be recognized at the moment of the subjective recognition of the “other,” the law places the ideal model of cosmopolitan democracy outside of political struggle, as the fortunate, accidental happening of modern Western society upon the pre-human condition of all creation. However, by romanticizing “the practice of endless questioning,” authors risk instating new anxieties, and

⁸⁴ This pastoral spirit undergoes periodical re-branding exercises. In the nineteenth century, the refined ethos of the gentleman; in the interwar period, the pragmatic balancing operations of legal experts; over the course of the last forty years, the post-modern spirit that counsels perpetual indeterminacy and totalizing self-reflectivity.

⁸⁵ LACLAU, *supra* note 56, at 114.

consequently their “own set of hypostases.”⁸⁶ In other words, the danger of the “strong” cosmopolitan variant of international law is that in characterizing its ideals as “empty,” or resistant, to particular cultural/political content, it assumes to stand in a one-to-one relationship as the pre-human void that suppresses its own exclusionary basis—exactly the critique that it levels upon fascism. By discounting the violent origins of its own material and ideological normative dispositions and structures, the “strong” argument operates according to the narcissistic ideal to the extent that it invests the formal content of international law with a trauma which it cannot face (e.g., the Lacanian Real).⁸⁷ Denying the passionate, violent decisions that foster and maintain the governmentality of cosmopolitan “tolerance,” the strong logic of post-foundational doctrine situates the hierarchies of traditional modes of ruler-ship within liberal societies to act as broker over political binaries (e.g., universal/particular, tolerant/non-tolerant, flexible/dogmatic), and more importantly, establishes a moral framework that projects its internal costs beyond into the peripheries in an obscene cycle. Discounting the structural dynamics that lead to political failure, the reoccurring catastrophes of global politics are attributed to some outside agent or dynamic, which is identified and in turn forced into an even deeper immersion of the very structural logic that necessitates the failure. Thus, it is not enough to afford political recognition of marginalized actors into the current order because the conditions of their participation depend on entering into an active forgetfulness or passivity—to say this differently, the call to emancipation through self-responsibility and “tolerance” is the opportunity to enlist oneself in the process of past oppression that occasioned the original demand for justice and freedom.

IV. CONCLUSION: NEW WINES, OLD SKINS, OR OLD SKINS, NEW WINES?

Legal scholars commonly invoke religion to ground their analysis, either as something that happens “out there,” which law should respond to, or as something intimate to the discipline. Despite the prevalence of thinking about religion, legal scholars

⁸⁶ See Akbar Rasulov, *International Law and the Poststructuralist Challenge*, 19 LEIDEN J. INT'L L. 799, 807 (2006).

⁸⁷ For an explanation of the Lacanian Real, see LORENZO CHIESA, SUBJECTIVITY AND OTHERNESS: A PHILOSOPHICAL READING OF LACAN 125–39 (2007).

tend to seriously discount theological perspectives or how they impact legal theory. In this Article, we have attempted to more fully draw upon theological arguments to consider the relationship between legal and theological approaches to human experience, and we hope, to undermine how mainstream narratives discount the divide between the operation of “secular” and religious reasoning within the rule of law.

If this is accurate, legal scholars are faced with a daunting task: to take Christian theology seriously. More generally, one might question whether Christianity is something coherent in itself, or whether it encompasses a provocative set of questions: What about the separation between Catholic and Protestant commitments? What about Jewish perspectives? How does the Christian experience differ in relation to different geographic locations, and so forth? What seems exciting to us is that these questions have not been sufficiently explored, and open a door to future research.