

[Draft]

## Law, Theology and Doxology

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If we think of the relationship of law and God today, we are likely to consider the relation within the framework of law as a body of knowledge. In this context, God is relevant only as God is known. Religious critiques of law are proposed and responded to as follows. On the one hand, some religious people contend theology provides certain necessary axioms, ethical principles or other information to the system of knowledge about law. On the other, secularists, some for religious and others for nonreligious reason, reject the necessity of theology for law. If the theological truths offered to the system of legal knowledge are really necessary to law but wrongly rejected because of secularism, then this error would count as a criticism of the current secularist body of legal knowledge and otherwise not.

This paper offers a different approach to religious critique of contemporary secularist jurisprudence based on the necessary conditions for adequate social praise of the law and the duty of Christians to praise God for law. The requirements of a discourse about law sufficient to praise law adequately are described by a branch of classical rhetoric, called epideictic, and the needed discourse of praise to God for all things, including law, this paper will refer to as doxology. The paper proceeds by reviewing early philosophical, theological and jurisprudential accounts of the necessary relation of law and theology as bodies of knowledge. Then it turns to a historic reinterpretation of this older legal-theological tradition as avenues for the praise of law and the recognition of the praise owed to God for law. A general discussion follows of the epideictic and doxological conditions for adequate praise of the law and of God for the law. Instead of merely posing theological knowledge against secular jurisprudence by arguing that knowledge of God is needed for law, this paper consider whether when praising something as significant as law, we must necessarily recognize God for reasons located within the nature of adequate praise, i.e. its need to elevate the object of praise and the difficulties of elevating fundamental goods without reference to God, rather than in the conditions of legal knowledge. It concludes by noting that in any case, for Christians even those with a secularist theology, the doxological duty to praise God for the law requires an elevating theological description of law and discusses two ways that Christians have praised God for law.

To begin, Western thinkers once treated law and theology as necessarily related in three ways: conceptually, normatively and practically (or logically, ethically and physically, to use the Stoic categories). To illustrate these various kinds of necessity, beginning with the logical, Plutarch argued a necessary analytical connection between law and theology because God “is

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himself justice and right, and the original and perfection of all laws.”<sup>2</sup> If God is justice and the paradigm of law, understanding justice and law requires knowing God.<sup>3</sup> Similarly, Eusebius held that the idea of human law is derivable and explicable only from the presence of God in man as Word and Law.<sup>4</sup> Again, Augustine identified justice with the love of God and held that God was “the law of all the arts.”<sup>5</sup> On the ethical side, approaching the identity of God and Law from a different direction, Plato and Augustine taught that imitation of God was the master norm for all laws, in agreement with which all other valid norms must be found.<sup>6</sup> Many following them argued that one needed theological knowledge of divine law and justice because human laws contrary to these were not law. Finally, theology’s practical necessity is exemplified by Plato’s precepts that one must know the theology of a people to be able to give a right law for them and must teach right theology to make the people able to receive law.<sup>7</sup>

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<sup>2</sup> “... for justice is the end of the law, the law is the prince's work, and the prince is the image of God, that disposes all things ... by the practice of virtue the prince makes himself most like the divine nature... For as God hath placed the sun and moon in heaven, as manifest tokens of his power and glory, so the majesty of a prince is resplendent on earth, as he is his representative and vicegerent ... and [God] hath not Justice for an assessor or counselor, but [God] is himself Justice and Right, and the original and perfection of all laws.” (Plutarch, *Ad Principem Ineruditum*, Section 3.781-4)

<sup>3</sup> For example, Plato held arguments for the existence, providence, and justice of God to be a necessary part of the explanatory prologues of laws. (*Nomoi* IV.716; X.885); Plato was imitating Zaleucus’s theonomic preface to his Locrian law. See Diodorus Siculus, *The Library of History*, 12.20.1–3. Plato considered “inspiration” by the knowledge of God a necessary condition for public office. (*Nomoi* XII.966).

<sup>4</sup> Eusebius, *Speech for the Thirtieth Anniversary of Constantine’s Accession*, Book 4 “And whence came the idea of lawful government and sovereignty to a being composed of flesh and blood? Who declared those ideas which are invisible and undefined ... Surely there was but one interpreter of these, the all pervading Word of God. ... And when that Word, his Word and royal Law is one: a Law ... not written or engraved on tablets ... but the living and self-subsisting Word, who himself is God, ... had impressed a character on the mind of man ... He gave him alone of all earthly creatures capacity to rule and to obey....” See, also, 3.7 “Ruler and chief of all these is the royal Word ... And the Father, having constituted him the living Word, and Law and Wisdom, the fullness of all blessing, has presented this best and greatest gift to all who are the subjects of his sovereignty.”

<sup>5</sup> Augustine, *De Vera Religione*, xxxi, 57. “We must not have any doubt that the unchangeable substance which is above the rational mind, is God. The primal life and primal essence is where the primal wisdom is. This is unchangeable truth which is the law of all the arts and the art of the omnipotent artificer.”

<sup>6</sup> Plato, *Laws*, 716c-e: “In our eyes God will be ‘the measure of all things’ in the highest degree—a degree much higher than is any ‘man’ they talk of. He, then, that is to become dear to such an one must needs become, so far as he possibly can, of a like character; and, according to the present argument, he amongst us that is temperate is dear to God, since he is like him, while he that is not temperate is unlike and at enmity,—as is also he who is unjust, and so likewise with the rest, by parity of reasoning. On this there follows, let us observe, this further rule,—and of all rules it is the noblest and truest,—that to engage in sacrifice and communion with the gods continually, by prayers and offerings and devotions of every kind, is a thing most noble and good and helpful towards the happy life, and superlatively fitting also, for the good man; but for the wicked, the very opposite. For the wicked man is unclean of soul, whereas the good man is clean; and from him that is defiled no good man, nor god, can ever rightly receive gifts.

<sup>7</sup> E.g., “Since, therefore, the opinions of men about the gods have changed, so also must their laws change.” Plato, *Laws*, 948d.

In addition to philosophers and theologians, early Western jurists faced the authority of the greatest single work of Western jurisprudence, Justinian's sixth-century codification of Roman law. In two critical passages of the Institutes and the Digests from the Corpus Iuris Civilis, we find passages seemingly teaching a necessary and substantial logical and analytical relation between theology and law:

Jurisprudence is the knowledge of things divine and human... . Institutes 1.1.1  
(Proem), Digest 1.10.2

Demosthenes the orator also defines law thus: "Law is that which all men ought to obey for many reasons, and chiefly because all law is an invention and gift of God,<sup>8</sup> and yet at the same time a resolution of wise men, a correction of misdeeds ... ." Chrysippus too, a philosopher of supreme stoic wisdom, begins his book On Law in the following terms: "Law is sovereign over all divine and mortal affairs. It ought to be the controller and ruler and guide ....Digest 1.3.1-2 (De Legibus).

These statements seem, and were understood by many, e.g., in the Glossa Ordinaria by Accursius and those who read his commentaries for centuries, to teach a necessary analytical connection between theology and law, requiring theological knowledge to be found in law.<sup>9</sup> Practical understanding of both right ("ius") and law ("lex") would necessarily require knowledge of God and man because both chiefly come from God and manifest in acts of men.<sup>10</sup> Jurists thus "are deservedly called priests," according to another early passage of the Digest, for they intermediate

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<sup>8</sup> Cf., Cicero, De Legibus, 2.8, I find that it has been the opinion of the wisest men that Law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition. Thus they have been accustomed to say that Law is the primal and ultimate mind of God, whose reason directs all things either by compulsion or restraint. Wherefore that Law which the gods have given to the human race has been justly praised; for it is the reason and mind of a wise lawgiver applied to command and prohibition.

<sup>9</sup> See, e.g., Accursius: Does it not follow from this [i.e. that law is knowledge of the divine] that whoever wants to be a legal scholar or attorney should read theology? I answer: No, all these things can be found in the body of law. Glossa Ordinaria ad Digesta, 1.1.10, s.v. "notitia" ("Sed numquid secundum hoc oportet quod quicumque vult iurisprudens vel iurisconsultus esse, debeat theologiam legere? Respondeo, non; nam omnia in corpora iuris inveniuntur.")

<sup>10</sup>The long history of the discussion about how the law does or does not contain Christian theology points out some of the deficiencies of the American and English dispute among common-law jurists concerning the same. When Jefferson treats this question, in "Whether Christianity is Part of the Common Law?" (1764) he ignores this long and refined history of treatment. See, e.g., <https://www.princeton.edu/~ereading/TJChristianity.pdf> Jefferson quite unreasonably, given his high handedness, ignores the tradition from Accursius through Bracton of affirming that Christian theology is contained in the law, limiting his discussion to a few recent cases as the sole source. See Henry de Bracton, "What Justice Is" in Bracton on the Laws and Customs of England, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge: The Belknap Press of Harvard University Press, 1968), 2:22–23 [arguing that justice is God]. His neglect of Bracton is especially striking.

between the divine and human, receiving from God an understanding of “goodness and fairness” and returning justice to God through use of the art of jurisprudence. D 1.1.1.<sup>11</sup>

But later interpreters of Roman law, beginning at least in the sixteenth century, tended to reject this analytical interpretation of these passages, some by distinguishing between what is necessary to praise and what is necessary to understand the law scientifically. For example, the Franciscan theologian Alfonso de Castro (1495-1558), a theorist of criminal law with extensive influence into the seventeenth century, wanted a scientific definition of law that excluded theology.<sup>12</sup> In the first section of his *De Potestate Legis Poenalis, libri duo* (1550), Castro states

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<sup>11</sup> The unity of law and theology is further underscored by the strange sounding claim that Law is sovereign over both the divine and human, perhaps better “the immortal and the mortal.” See Cicero, *On the Nature of the Gods*, 1.36 (noting that Cleanthes and Chrysippus hold that “law of its nature is divine” and that the highest divinity is a living law, “nomos empsychos.”) This quotation from Chrysippus, is itself a quotation of Pindar:

Law is the sovereign of all, Of mortals and immortals, It leads with the strongest hand, And may justify the greatest violence. I judge this from the works of Hercules. Pindar, Fragment No. 169a

It’s interesting to note how Chrysippus reverses the usage of this same passage that Plato put in the mouth of the wicked Callicles:

“[the passage begins with a misquote of the Pindar above with modified grammar and continues, as follows, offered as Callicles’ argument based on Pindar for the rule of the strong]...for unpurchased—the words are something like that—I do not know the poem well—but it tells how he drove off the cows as neither a purchase nor a gift from Geryones; taking it as a natural right that cows or any other possessions of the inferior and weaker should all belong to the superior and stronger.” Plato, *Gorgias* 484b-c

Pindar could more piously be read to mean that the law brings the violence (of Geryones) to justice. Plato may have Callicles abandoning the more pious interpretation and modifying the Greek for effect to show his character. The Chrysippus quotation can be better understood by considering how he echoes the conclusion of Cleanthes’ Hymn to Zeus, the work of his predecessor as head of the Stoa:

Praising Your works continually with songs,  
As mortals should; nor higher reward belongs  
To mortals or immortals, than justly to adore  
The universal Law for evermore.

On this well known Stoic view, the lesser divinities and man join together harmoniously in giving praise to the living and eternal Law, which is God. The effect of this hymn on Western jurisprudence is witnessed by Hooker. Hooker paraphrases this passage at the conclusion of the first book of his *Laws of Ecclesiastical Polity*: “of Law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power, both Angels and men and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy.”

<sup>12</sup> For a description of his life, word and extensive influence on legal thought, see *Law and Religion, The Legal Teachings of the Protestant and Catholic Reformations*, Harald Maihold, *God’s Wrath and Charity*, (V&R 2014), 152-154

at the outset that he wishes to speak of human law alone and seeks to make a definition of human law, which, while separately acknowledging that human laws cannot contradict divine law or justice, defines human law separately from its theological sources. But he acknowledges a difficulty, namely the discussion of theology from the *Corpus Iuris Civilis*, quoted above, and the tradition of the Glossators, holding that theology was incorporated into the civil law. He concludes that the passages above are very bad definitions of human laws, but reflect the necessity of theology for the praise of law as a whole. His interpretation became a standard treatment later for understanding these passages:<sup>13</sup>

For I do not believe that Demosthenes with these words defined law as [the passage quoted above seems to teach], but expressed the encomium of law, that is, praise of it. One should not conclude that every assertion about something in an oration is a definition [i.e. intended as an axiom for development *ad more geometric*], even if much is said of it in the oration, because many such orators refers to the praise of which they speak and not the definition of them.

Orators and rhetoricians are often making this kind of praise when they attempt to persuade. Because praise of something has this property that it influences the soul of the listeners to love it. [In the same way, Cicero praised law in his speech for Aulo Cluentius] in order to persuade the judges to guard the dignity and justice of the laws. I think Demosthenes had the same goal [in the quotation above, and Chrysippus, when he defines law in terms of what is sovereign over the divine and human.]

Accursius [the 13<sup>th</sup> century compiler of the *Glossa Ordinaria*] thinks this should instead be understood as a definition so that the science of civil right draws as much from divine matters as human. For as he says, it brings in the mystery of the Trinity and the most sacred church, along with the monarchy and other human matters. And for that reason, Accursius also thinks Chrysippus has said law is the knowledge of all things human and divine.<sup>14</sup>

Castro goes on to reject Accursius' interpretation of the role of theology. He argues that the Roman laws did not contain all theological truths, and certainly did not do so at the time Chrysippus wrote before the Christian emperors. But theology does have a necessary role for Castro. It is necessary to praise law.

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<sup>13</sup>See, e.g., Gershom Carmichaels annotations to Pufendorf's *On the Duties of Man*, p. 59, (q) referring to these passages "in Inst. 1 and 2 and D. de LL, magis coacervatio generum & oratorium legis encomium, quam definition, secundum Graecorum morem refertur."

<sup>14</sup>Author's translation. From the 1556 Lyon edition, *De potestate legis poenalis libri duo*, p. 29-32.

Acknowledging the insight of Demosthenes, Chrysippus and Cicero, Castro goes on to explain that the knowledge of all things divine is not contained in the individual laws dealt with by legal science, at least not as they are considered one by one. Theology becomes necessary when we come to praise all “all laws bound up and joined at once.” When we come to praise law as a whole, by praising it as something we should obey, something just, our praise reflects a necessary knowledge about theology. To praise the law as just, we must know in the negative sense that the law does not violate the law of God and in the positive sense that the law follows from it. So, when we praise law, even minimally by calling it “just” and “something to be obeyed,” we must praise something necessarily about its overall conformity with the character and will of God.<sup>15</sup> Castro concludes by citing the “testimony of Solomon” and the words of “Divine Wisdom”: “through me kings reign and rulers make just laws.[Proverbs 8:15]” When we praise something as just and hence as valid law, we do so by saying that it is something arising from the work of Divine Wisdom. We cannot praise the law without knowing what God wills and approves. But this does not mean that theological knowledge is individually involved in the science of particular laws. It means that it is necessary to praise the law appropriately.

A religious critique of modern legal thought could reassert against modern secularism the necessary relation of God to law analytically saying “law is analytically unintelligible, normatively disordered and practically impaired without theology.” But these are views to which modern legal thought is either closed or calloused, perhaps protecting pluralism, perhaps prohibiting prophecy. We will not hear that God must be acknowledged or obeyed, taught or taken into account. But, as Castro argues, there is another way the necessary relation of theology and law has been and still can be expressed against which modern thought is less prepared or prejudiced, indeed, which it hardly perceives. This relation of necessity is not analytical, normative, practical but doxological. Doxology, (from *doxa*, meaning glory, and *logos*, discourse) is the discourse of praise or glorification. That is, it is based on considering the needs we have to praise the law so as to persuade people, not necessarily of the essential structures of law, but to love it. This is why orators praise the law in order to persuade people to love and respect and uphold law. Instead of arguing that theology is necessary to understand the law, Castro suggest another line of criticism, theology is necessary adequately to praise the law. To adequately praise the law, we need to praise it, and God, in terms of God’s role in it.

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<sup>15</sup>The long history of the discussion about how the law does or does not contain Christian theology points out some of the deficiencies of the American and English dispute among common-law jurists concerning the same. When Jefferson treats this question, in “Whether Christianity is Part of the Common Law?,” (1764) he ignores this long and refined history of treatment. <https://www.princeton.edu/~ereading/TJChristianity.pdf> He quite unreasonably, given his high handedness, ignores the tradition from Accursius through Bracton of affirming that Christian theology is contained in the law. See, e.g. Accursius: Does it not follow from this [i.e. that law is knowledge of the divine] that whoever wants to be a legal scholar or attorney should read theology? I answer: No, all these things can be found in the body of law. *Glossa Ordinaria ad Digesta*, 1.1.10, s.v. “notitia” (“Sednumquidsecundum hoc oportet quod quicumque vult iurisprudens velle iurisconsultus esse, debeat theologiam legere? Respondeo, non; nam omnia in corpora iuris inveniuntur.”) See also Henry de Bracton, “What Justice Is” in Bracton on the Laws and Customs of England, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge: The Belknap Press of Harvard University Press, 1968), 2:22–23 [arguing that justice is God].

Doxology's paradigm is the hymn, praise to God, and its political analogue is the panegyric – a speech before the whole (*pan*) public assembly place (*agora*) as opposed to before more limited audiences in the forum courts or legislatures. Another paradigm is the encomium, the praise of a man, especially a king, a city or any other thing, like law, at a public occasion like a court ceremony, funeral or wedding. The development of doxology as an art belongs not to any of the philosophical categories -- logic, ethics or physics -- but to epideictic rhetoric. That is, it belongs to the rhetoric of “theoretical” discourse, as epideictic is distinguished by Aristotle, because it is given before “*theoroi*,” an audience without the duty of immediate action, as opposed to a jury or legislature with critical (i.e. decisional) responsibilities. Epideictic rhetoric “appeals to common values, undisputed though not formulated, made by one who is qualified to do so, with the consequent strengthening of adherence to those values with a view to later [not immediate] possible actions.”<sup>16</sup> Aristotle observes that epideictic is convertible into deliberative rhetoric for we praise what we would recommend and recommend what we would praise.<sup>17</sup> Thus, epideictic rhetoric, or doxology, is “theoretical” not in the sense that it is concerned only with truth, but in that its immediate aim to make the truth loved now, rather than acted on.<sup>18</sup>

Praise follows a different principle of discourse than proof. The type of argument necessary for epideictic is elevation, heightening or amplifying, rather than the necessary enthymeme of forensics or the example of deliberative rhetoric (amplification occurs primarily by augmentation which ties the lower to the higher, but also by reasoning from effects or causes, comparison to others, or accumulation of many goods). Thus, classically, Aristotle<sup>19</sup> and Quintilian<sup>20</sup> distinguished the elevating methods of “epideictic” discourse – for “elevation” of the subject is the essential pattern that allows hymns, panegyrics and encomia to praise from the methods of trial attorneys and legislators. The purpose of praise is neither persuasive proof about the past (the concern of the trial attorney) nor a proposal's felicity for the future (the legislator). Praise promotes present appreciation of Virtue in the praised, the right evaluation of Excellence

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<sup>16</sup>Perelman and Olbrechts-Tyteca, *The New Rhetoric*, 543.

<sup>17</sup>Aristotle, *Rhetoric*, I.9, [1367-1368a]: “To praise a man is in one respect akin to urging a course of action. The suggestions which would be made in the latter case become encomiums when differently expressed. When we know what action or character is required, then, in order to express these facts as suggestions for action, we have to change and reverse our form of words.” By the same expansion, it is akin to forensic rhetoric in that we praise now what we would find just if it had been done in the past. The justice of a man's past actions are fundamental topics of praise.

<sup>18</sup>For the speaker, Quintilian suggests, doxology also is not merely theoretical in that it has performative aspects, i.e., it does not merely describe something, but by praise elevates its subject over objects of comparison, and shows the subjection or love of the speaker. Praise places us in a relation to the one we praise. Thus, when we praise law, we show that we are subject to it and that is higher than we are. Praise of the law performs respect for the law. Quintilian, *Institutes of Oratory*, 8.4.9 (“But as this kind of amplification looks always to something higher, so that which is made by comparison seeks to raise itself on something lower. For by elevating that which is beneath, it must of necessity exalt that which is placed above.”)

<sup>19</sup> *Rhetoric* 1.9

<sup>20</sup>*Institutes of Oratory*, 8.4.

embodied here and now, the presentation of the participation of particular things in God's general Goodness (the concern of all public speakers).

The methods of praise, doxology or epideictic necessarily differ also from the methods of scientific or philosophical analysis of Being, whether we are dividing genera into specific parts, marking off essential distinctions, observing empirical patterns.<sup>21</sup> Praise is not induction from the particulars of experience, nor is its elevation found in the abstracted essence nor in deduction's precise logical derivation of necessary properties from self-evident intuitions. Praise must amplify ordinary estimation by elevating and heightening, which at its height we call hyperbole – hyperbole means literally throwing something beyond itself -- so that the share of something in the overall scheme of cosmic, well-ordered goodness comes into view, more even than the thing itself being praised.

The grounds of the distinction between the discourse of praise and others can be seen clearly in the epithalamium or wedding speech. If we apply deductive discourse to the praise of the marriage of a man and woman, we might define the essential biological, legal or canonical minima for a kind of state-regulated civil domestic contract and then demonstrate that a particular couple contracted in this way. This might be best in a court if the question of whether a couple is married or not. If we turn to social science, we might call the marriage a social form likely to produce 1.6 children with a fifty-percent chance of divorce in 15 years. But to praise, we show in marriage the operation of a higher principle, so that the marriage is hyperbolized – that is “thrown beyond itself” into relation with a higher good. Christians call to mind, for instance, that first mysterious law by which not the couple alone, but God too, has made them one flesh, placing their unity beyond the bounds of man, including themselves, to separate and locating the value of their marriage above its visible earthly components, men and women with fallible wills and vows, into the will and law of God.

Praise, unlike science, is not inhibited because we do not fully understand. We do not understand the mysterious law of Genesis by which man and woman become one flesh, though they apparently occupy two bodies, nor the reality that the marriage of a man and a woman refers not just to their love but to Christ's love for the church. To analogize with law, we do not understand how human authorities that seem to arise from ordinary political processes “have been established by God” as the Apostle Paul says in Romans 13.<sup>22</sup> We do not understand how man and woman become one or how politicians and judges become God's “agents of wrath” because, in both cases, this is God's activity as well as man's. We do not understand law fully because the law is not – or is not as we know law as an object of praise -- only the elements open to analysis, neither man-made formulae in books nor the extensive apparatus of coercion and

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<sup>21</sup>Unless, like Heidegger, we follow the maxim of the 17<sup>th</sup> century Pietists “Denken ist Danken” or “to think is to thank.” See, *What is Called Thinking?* (1951-2)

<sup>22</sup> Ro 13:1 ... The authorities that exist have been established by God. ... 4 For he is God's servant to do you good. ... He is God's servant, an agent of wrath to bring punishment on the wrongdoer.



execution of punishment nor the body of lawful who obey out of fear or habit. Nevertheless, we can praise what we do not understand fully. Thus, law and marriage can both be more widely praised than understood; its principles more praised than proven. The epideictic art abides because we can better comfort at funerals, celebrate at weddings, explain our respect of law by praise than by syllogistic proof or induction from history.

The necessity of involving God in epideictic praise of law is well attested by history. Before the modern period, law was universally praised as involving God. The need to invoke God arises wherever the thing to be praised is found at the top of things we value. The greater the thing is that we wish to praise, that is, the closer what we praise comes to being a fundamental good (and law for those who advocate that it should be the highest power in the state is very high), the harder it is to hyperbolize, to throw beyond itself, and the higher we must look to find something with which to elevate it. A man's dog, he can praise as "man's best friend," and a man's real best friend, he can praise as his "brother," but what can a man call his own brother that is higher?<sup>23</sup> Perhaps, he must assert an actual physical union of being, "my own flesh and blood." Perhaps, as in some cultures, he refers to his brother as his "uncle" or "like a father." At the upper registers of the scale of praise, we run into difficulties. If we praise a man as "the image of God" or possessed of inherent dignity, what can we call the king of men except "god," which is the unfortunate choice of many cultures and perhaps authorized analogically, or better an "agent of God"?<sup>24</sup> If we praise the rule of law by calling the law a king, as the ancients put it "Lex Rex" and "Nomos Basileus", how can we praise the king without undermining the law we praised already in his name. Thus, it was only those opposed to kingship who praised law in this way. But law in itself the ancients always praised in terms of its relation to God, as we saw above, even identifying it with God. From the standpoint of epideictic, this was not an accident but a necessity that arose in the effort to praise something placed at the highest point of the state.

If we take the demands of doxology or epideictic seriously, we could imagine a critique modern legal thought (bracketing whether atheistic jurisprudence lacks something analytically, normatively or practically necessary to law) based on its omission of something necessary to praise law as well as we ought, must or could. Interestingly, though the U.S. Supreme Court is more draconian with respect to other types of public speech, it still permits a "God Save the United States and This Honorable Court," "In God We Trust," public prayer, invocations and other formulae of theistic civil religion, where the purpose is epideictic rather than dogmatic.<sup>25</sup>

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<sup>23</sup>Thus, when Jacob wanted a term of praise for Esau, he was forced to transpose his familial relation with his brother Esau and called him "my lord," but what this term gains in displaying respect, it lost in replacing a relation of natural affection with one of fear. Genesis 33:8

<sup>24</sup>Compare Ps 82:6-7 "I said, 'You are "gods"; you are all sons of the Most High.' 7 But you will die like mere men; you will fall like every other ruler." and Romans 13.

<sup>25</sup>See, e.g., *Town of Greece v. Galloway*, 134 S.Ct. 1811 (2014)(allowing prayer before legislative sessions which is intended to lend gravity to the occasion and reflect values long part of the Nation's heritage; prayer which is solemn and respectful in tone, and which invites lawmakers to reflect upon shared ideals and common ends before

We could re-interpret the necessary connections that were once drawn between law and theology not in terms of our contentious analytical, normative or practical disputes, but in terms of the conditions of an adequate rhetoric of praise, the encomium of law by which society is brought to appreciate law's value. As the U.S. Supreme Court has continued to recognize the value of public thanksgiving and petition to God before legislative and court sessions despite a general trend of enforced secularization, we might come to see the need to praise God for the law, indeed to pray for it, in legal thought.

This may be timely because of growing contemporary cynicism about law and because political polarization undermines prior secular practices praising law in terms of "liberal" social consequences, which are now of politically contested significance. It may also be necessary because what contemporary praise of law there is tends to be of the "end-of-history," Whiggish variety, triumphalistic and unconvincing given the failures and reversals suffered by globalist cosmopolitanism. To put it another way, given our limited secular tools, when moderns praise law, we praise law demagogically by over-praising and overpromising the consequential goods that will come from law, so that the resulting commitment to the law must be blind to the limits of law and eschatologically ambitious, dangerously so. Judges, or observers of the judges, persuaded to love the law only because it leads to desirable outcomes can only be sure that the law is being followed if the desired outcomes occur. When they don't occur, we need a doxology of law that can excite love of the law while remaining open to the criticism of its historical and present outcomes.

Christians have another reason to approach law in relation to the requirements of praise. Christians have a duty to praise law in relation to God, that is to acknowledge law as a gift from God. The failure to acknowledge God as the source of our political order is itself a great sin as King Nebuchadnezzar discovered. His failure to praise God for his power and the claim that his political order was the result of his own hand led to his judgment.<sup>26</sup> Christians have a duty to respond to law, indeed, "everything," judges and lawmakers, indeed "everyone" with thanksgiving. Praising God with thanksgiving for them.

Eph 5:18-20... Be filled with the Spirit. Sing and make music in your heart to the Lord, always giving thanks to God the Father for everything, in the name of our Lord Jesus Christ.

1Ti 2:1 ... thanksgiving for everyone, 2 for kings and all those in authority ....

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they embark on the fractious business of governing) The Court's holding could have been dictated by classical treatises on the ends of epideictic rhetoric.

<sup>26</sup> Da 4:29 [King Nebuchadnezzar] said, "Is not this the great Babylon I have built as the royal residence, by my mighty power and for the glory of my majesty?" [and God stripped him of his royal authority.]

Not only that, Christians have an obligation to develop their praise of God for things so that they can not only be felt inwardly but expressed intelligently outwardly for others.

1Co 14:15 I will sing with my spirit, but I will also sing with my mind. 16 If you are praising God with your spirit, how can one who finds himself among those who do not understand say "Amen" to your thanksgiving, since he does not know what you are saying?

Thus, even Christians who are secularists for theological reasons, that is they do not want Christian theology to influence public debate or standards about law, have a reason to articulate a theology of law so that they can praise God for law.

In the Christian tradition, we find two ways of praising law in relation to God, the demiurgic and liturgic. As Castro did citing Proverbs 8:15, we praise law as coming from God or involving God's participation in some way; God is the craftsman, i.e. demiurge, which is literally worker for the public and later came to mean also a political ruler, guiding human law. It is part of God's providence and blessing upon man to give rulers wisdom, to direct the course of nations, to stand present in the courts of the law. The law must therefore be praised as something, not an invention of man, but a blessing subject to God's control.

Ps 72:1 Endow the king with your justice, O God, the royal son with your righteousness.

Pr 8:15 By me kings reign and rulers make laws that are just; 16 by me princes govern, and all nobles who rule on earth.

Pr 21:1 The king's heart is in the hand of the LORD; he directs it like a watercourse wherever he pleases.

Da 2:19 During the night the mystery was revealed to Daniel in a vision. Then Daniel praised the God of heaven 20 and said: "Praise be to the name of God for ever and ever; wisdom and power are his. 21 He changes times and seasons; he sets up kings and deposes them. He gives wisdom to the wise and knowledge to the discerning.

2Ch 19:5 [King Jehosaphat] appointed judges in the land, in each of the fortified cities of Judah. 6 He told them, "Consider carefully what you do, because you are not judging for man but for the LORD, who is with you whenever you give a verdict. 7 Now let the fear of the LORD be upon you. Judge carefully, for with the LORD our God there is no injustice or partiality or bribery."

By contrast, we praise law liturgically when we praise law as a way to seek God through justice, to offer a sacrifice of justice. The prophets, thus, place acts of justice and acts of physical sacrifice on the same plane with preference to the former:

1Sa 15:22 But Samuel replied: "Does the LORD delight in burnt offerings and sacrifices as much as in obeying the voice of the LORD? To obey is better than sacrifice, and to heed is better than the fat of rams.<sup>23</sup> For rebellion is like the sin of divination, and arrogance like the evil of idolatry. Because you have rejected the word of the LORD, he has rejected you as king." <sup>24</sup> Then Saul said to Samuel, "I have sinned. I violated the LORD's command and your instructions. I was afraid of the people and so I gave in to them.

Mic 6:7 Will the LORD be pleased with thousands of rams, with ten thousand rivers of oil? Shall I offer my firstborn for my transgression, the fruit of my body for the sin of my soul? <sup>8</sup> He has showed you, O man, what is good. And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.

Ho 6:6 For I desire mercy, not sacrifice, and acknowledgment of God rather than burnt offerings.

Pr 21:3 To do what is right and just is more acceptable to the LORD than sacrifice.

Mt 12:7 If you had known what these words mean, 'I desire mercy, not sacrifice,' you would not have condemned the innocent.

Injustice is a barrier to worship, and justice is a form of worship. Justice is a way of knowing God, a way back to Him:

Jer 22:2 'Hear the word of the LORD, O king of Judah, you who sit on David's throne-- you, your officials and your people who come through these gates. <sup>3</sup> This is what the LORD says: Do what is just and right.....Jer 22:16 Is that not what it means to know me?'" declares the LORD.

The demiurgical praise of law differs from the liturgical as the exitus from the redditus of Pseudo-Dionysian mystic theology. Law presents itself to us as a stairway of descent and ascent. The grace of God comes down to us through his action and providence in law, and we return to God by following the possibilities of law for justice back to Him. For Christians, a doxological critique of modern legal thought is necessary because we have a

two-fold obligation to praise God for his demiurgical providence in the law and to praise God for the avenue of law, which He provides, as a way to approach and know Him.

The great work in the common-law tradition exemplifying these two approaches is Fortescue's *In Praise of the Laws of England*, a work explicitly in the epideictic mode, i.e. a work of praise. In his speeches to the young king, the "Chancellor" makes a number of arguments in praise of the law. Appealing to the passages discussed about from the Digest, he argues that English laws are praiseworthy like the laws of the Torah because they are all sacred, reflecting God's demiurgy:

Not only the laws of Deuteronomy, but also all human laws, are sacred sanction ... in virtue of which they call us priests. For a priest is by etymology said to be one who gives or teaches holy things, and because human laws are said to be sacred, hence the ministers and teachers of the law are called priests. [For] all laws that are promulgated by man are decreed by God. For since the Apostle says 'all power is from the Lord God,' laws established, who receives power to this end from God, are also formulated by God, as is implied by the Author of the Causes when he says that, 'Whatever the second cause effects, so also does the first cause in a sense superior and more excellent.' Wherefore, Jehosophat, King of Judah, says to his judges, 'the judgments that you give are the judgments of God.' By this you are taught that to learn the laws, even though human ones is to learn laws that are sacred and decreed of God, the study of which does not lack the blessing of divine encouragement." (chp. 3)

Not only are the laws of England praiseworthy because they are the work and demiurgy of God, but also because liturgically they are a way of seeking God:

Are not these arguments, then, most serene Prince, enough to stir you to the study of law? For you will thereby be endued with the habit of justice and will therefore be called just; you will be able to avoid the disgrace of ignorance of the law, and, enjoying happiness through the law, you will be blessed in this life; you will moreover be imbued with the filial fear which is God's wisdom and will, unperturbed, and pursue the charity which is love towards God, thereby cleaving to God, as in the words of the Apostle, "You shall become one in spirit with Him." (1 Cor 6:17)

For those seeking first to cleave to God, or unsure how to reconcile modern about secularism with their faith that God is King and Lawmaker and Judge over all, the duty to praise God for law offers a practical step towards involving God in law that is largely independent of those debates.